INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

CASE CONCERNING THE CONTINENTAL SHELF

(LIBYAN ARAB JAMAHIRIYA/MALTA)

VOLUME I

Special Agreement; Memorials

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DU PLATEAU CONTINENTAL

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The case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, entered on the Court's General List on 26 July 1982 under number 68, was the subject of Judgments delivered on 21 March 1984 (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Application to Intervene, Judgment, I.C.J. Reports 1984*, p. 3) and 3 June 1985 (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 13).

The pleadings and oral arguments in the case are being published in the following order:

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Volume II. Counter-Memorials of the Libyan Arab Jamahiriya and Malta; Application by Italy for Permission to Intervene, and consequent proceedings.
Volume III. Replies of Tunisia and the Libyan Arab Jamahiriya; commencement of Oral Arguments.
Volume IV. Conclusion of Oral Arguments; Documents submitted to the Court after closure of the written proceedings; Correspondence.
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SPECIAL AGREEMENT

COMPROMIS

THE SECRETARY OF THE PEOPLE'S COMMITTEE FOR THE PEOPLE'S FOREIGN LIAISON BUREAU OF THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA AND THE MINISTER FOR FOREIGN AFFAIRS OF THE REPUBLIC OF MALTA TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

19 July 1982.

On behalf of the Socialist People's Libyan Arab Jamahiriya and the Republic of Malta, and pursuant to Article 40, paragraph 1, of the Statute of the International Court of Justice and Article 39 of the Rules of Court, we have the honour to notify you of and to transmit to you a certified copy of the Arabic and English texts of a Special Agreement concluded

> "between the Socialist People's Libyan Arab Jamahiriya and the Republic of Malta for the submission to the International Court of Justice of difference".

The Special Agreement was signed at Valletta on 23 May 1976, corresponding to 24 Jumada al-Ula 1396 A.H., and came into force in accordance with its Article IV on the date of the exchange of the instruments of ratification thereof, which took place at Valletta on 20 March 1982.

It was registered jointly by the two Parties with the United Nations Secretariat, in accordance with Article 102 of the Charter of the United Nations, on 19 April 1982.

We further have the honour to inform you, pursuant to Article 40 of the Rules of Court, that

(i) Dr. Abdelrazeg El-Murtadi Suleiman, Professor of International Law at the University of Garyounis, Benghazi, has been appointed Agent for the Socialist People's Libyan Arab Jamahiriya for the purposes of the present case. Communications concerning the case could be addressed to the Agent at the Permanent Mission of the Socialist People's Libyan Arab Jamahiriya to the United Nations, 47 Avenue Blanc, 1202 Geneva, Switzerland.

(ii) Dr. Edgar Mizzi, Chairman, Malta Law Commission and Special Legal Adviser to the Government of Malta, has been appointed Agent of the Republic of Malta for the purposes of the present case and his address for service at the seat of the Court shall be Dr. Edgar Mizzi, Agent of Malta before the International Court of Justice, c/o Blackstone, Rueb and van Boeschoten, Koninginnegracht 27, 2514 AB 's-Gravenhage.

We request you to be so kind as to submit the above-mentioned Special Agreement to the Court.

For the Socialist People's
Libyan Arab Jamahiriya:

(Signed) Abdel-Ati Ibrahim EL OBEIDI,
Secretary of the People's
Committee for the People's
Foreign Liaison Bureau.

For the Government of
the Republic of Malta:

(Signed) Alex Sceberras TRIGONA,
Minister for
Foreign Affairs.

Enclosures:

1. Certified copy of the Arabic and English texts of the Special Agreement of 23 May 1976.
2. Two exchanged letters dated 23 May 1976 concerning the oral hearings.
3. Certified copy of the Arabic and English texts of the Procès-Verbal of exchange of instruments of ratification of the Special Agreement of 23 May 1976, which took place on 20 March 1982.
4. Certified copy and certified English translation of the instrument of ratification of the Special Agreement of 23 May 1976 by the Socialist People's Libyan Arab Jamahiriya.
5. Certified copy and certified Arabic translation of the instrument of ratification of the Special Agreement of 23 May 1976 by the Republic of Malta.

The Hague, 26 July 1982.

We, the Agent of the Socialist People's Libyan Arab Jamahiriya and the Agent of the Republic of Malta certify that the pages attached hereto and initialled by us constitute true and complete copies of the original documents.

(Signed) Abdelrazeg EL-MURTADI SULEIMAN *(Signed)* Edgar MIZZI.

1. SPECIAL AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALTA AND THE GOVERNMENT OF THE LIBYAN ARAB REPUBLIC FOR THE SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE OF DIFFERENCE

The Government of the Republic of Malta and the Government of the Libyan Arab Republic agree to recourse to the International Court of Justice as follows:

Article I

The Court is requested to decide the following question:

What principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic, and how in practice such principles and rules can be applied by the two Parties in this particular case in order that they may without difficulty delimit such areas by an agreement as provided in Article III.

Article II

1. The proceedings shall consist of written pleadings and oral hearings.

2. Without prejudice to any question of the burden of proof, the written pleadings shall consist of the following documents:

(a) Memorials to be submitted simultaneously to the Court by each Party and exchanged with one another within a period of nine months from the date of the notification of this agreement to the Registrar of the Court.

(b) Replies to be similarly submitted to the Court by each Party and exchanged with one another within four months after the date of the submissions of the memorials to the Registrar.

(c) Additional written pleadings may be presented and exchanged in the same manner within periods which shall be fixed by the Court at the request of one of the parties, or if the Court so decides after consultation with the two Parties.

3. The question of the order of speaking at the oral hearings shall be decided by mutual agreement between the Parties but in all cases the order of speaking adopted shall be without prejudice to any question of the burden of proof.

Article III

Following the final decision of the International Court of Justice the Government of the Republic of Malta and the Government of the Libyan Arab Republic shall enter into negotiations for determining the area of their respective continental shelves and for concluding an agreement for that purpose in accordance with the decision of the Court.

Article IV

This agreement shall enter into force on the date of exchange of instruments of ratification by the two Governments, and shall be notified jointly to the Registrar of the Court.

Done in two originals at Valletta, Malta, this 23rd day of May 1976 corresponding to 24 Joumada El Oula 1396 H in the English and Arabic languages both texts being equally authentic.

For the Government of the Republic of Malta	For the Government of the Libyan Arab Republic
(Signed) Wistin ABELA, Minister of Development.	*(Signed)* Taha Sherif BEN AMER, Minister of State for Revolutionary Command Council Affairs.

مــادّة (٣)

على اثر صدور قرار المحكمة النهائي ، تدخل كل من حكومة الجمهورية العربية الليبية وحكومة جمهورية مالطا في مفاوضات لاجل تحديد منطقتي جرفيهما القاريين، ومن اجل عقد اتفاقية لهذا الغرض وفقا لقرار المحكمة ٠

مــادّة (٤)

تدخل هذه الاتفاقية حيّز النفاذ اعتبارا من تاريخ تبادل وثائق التصديق عليها من قبل الحكومتين ، ويخطر بها مسّجل المحكمة من قبل الطرفين سويّا ٠

حرّرت بفالّيتا ، مالطا ، بتاريخ ٢٤ جمادى الاولى ١٣٩٦ هـ٠ الموافق ٢٣ مايو ١٩٧٦ م٠ من نسختين اصليّتين باللّغتين العربية والانجليزيّة ، كلاهما متساو في القوة القانونية ٠

عن حكومة الجمهورية العربية الليبية
(طه الشّريف بن عامر)
وزير الدّولة لشئون مجلس قيادة الثورة

عن حكومة جمهورية مالطا
(وستّين ابيلا)
وزيــــر التنميــــة

اتّفاقيّة خاصّة
لاحالة خلاف الى محكمة العدل الدولية
بين
حكومة الجمهورية العربية الليبيّة
وحكومة جمهورية مالطا

انّ حكومتي الجمهورية العربية الليبية وجمهورية مالطا ، اتفقتا على اللجوء الى محكمة العدل الدولية وفقا لمايلي :

مادّة (١)

المطلوب من المحكمة ان تصدر قرارها حول الموضوع التالي :

ماهي مبادئ وقواعد القانون الدولي التي يمكن تطبيقها في تحديد منطقة الجرف القارى التابع للجمهورية العربية الليبية ، ومنطقة الجرف القارى التابع لجمهورية مالطا ، وكيف يمكن عليّا تطبيق مثل هذه المبادئ والقواعد من قبل الطرفين في هذه الحالة بالذات بحيث يتمكّنا بدون صعوبات من تحديد تلك المناطق عن طريق اتفاقية وفقا للمادة الثالثة •

مادّة (٢)

١) تتكون الاجراءات من مرافعات تحريريّة واخرى شفوية •

٢) مع عدم الاخلال بايّة مسائل قد تظهر وتتعلق بالاثباتات ، فان المرافعات التحريريّة تتكوّن من الوثائق التالية :

أ — مذكرات تقدم للمحكمة في آن واحد وتتبادل بين الطرفين خلال مدة (٩) تسعة اشهر من تاريخ اخطار سجل المحكمة بهذه الاتفاقيّة •

ب — ردود تقدم بنفس الطريقة الى المحكمة من كل طرف، وتتبادل بينهما في خلال (٤) اشهر بعد تاريخ تقديم المذكرات الى السجّل •

جـ — مذكرات تحريريّة اضافيّة يمكن تقديمها وتبادلها بنفس الطريقة خلال مدد تحدّدها المحكمة بناء على طلب اى من الاطراف او عندما تقرّر المحكمة ذلك بعد التشاور مع الطرفين •

٣) تتقرّر مسألة نظام الكلمات في المرافعات الشفويّة باتفاق ثنائي بين الطرفين • ومهما كان نظام الكلمة المقبول ، فانه يجب عدم اخلاله بايّة مسائل تتعلق بظهور الاثبات •

2. EXCHANGE OF LETTERS DATED 23 MAY 1976 CONCERNING THE ORAL HEARINGS

THE MINISTER OF DEVELOPMENT OF THE REPUBLIC OF MALTA TO THE MINISTER OF STATE FOR REVOLUTIONARY COMMAND COUNCIL AFFAIRS OF THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

I have the honour to refer to paragraph 3 of Article II of the Special Agreement for the Submission to the International Court of Justice of a Difference, signed between our two Governments in Valletta on 23 May 1976, corresponding to 24 Jumada El Oula 1396 H.

I have the honour to suggest that at the oral hearings the representatives of the Republic of Malta will speak first.

If this suggestion is acceptable to Your Excellency's Government, this letter and Your Excellency's reply confirming acceptance of the suggestion, will constitute an agreement between our two Governments on the matter and will be read and construed as one with the Special Agreement referred to above.

(Signed) Wistin ABELA.

THE MINISTER OF STATE FOR REVOLUTIONARY COMMAND COUNCIL AFFAIRS OF THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA TO THE MINISTER OF DEVELOPMENT OF THE REPUBLIC OF MALTA

I have the honour to refer to your letter signed on 24 Jumada El Oula 1396 H corresponding to 23 May 1976 which translated in the Arabic language reads as follows:

> "I have the honour to refer to paragraph 3 of Article II of the Special Agreement for the Submission to the International Court of Justice of a Difference, signed between our two Governments in Valletta on 23 May 1976, corresponding to 24 Jumada El Oula 1396 H.
>
> I have the honour to suggest that at the oral hearings the representatives of the Republic of Malta will speak first.
>
> If this suggestion is acceptable to Your Excellency's Government, this letter and Your Excellency's reply confirming acceptance of the suggestion, will constitute an agreement between our two Governments on the matter and will be read and construed as one with the Special Agreement referred to above."

I have the honour to confirm that the Government of the Libyan Arab Republic accepts the contents of the above-mentioned letter.

(Signed) Taha Sherif BEN AMER.

يا صاحب السعادة ،

اتشرف بان اشير الى رسالتكم الموقعة بتاريخ ٢٤ جمادى الاولى ١٣٩٦ هـ. الموافق ٢٣ مايو ١٩٧٦ م. والتي نصّها مترجما للغة العربيّة ما يلي :

" اتشرّف بان اشير الى الفقرة (٣) من المادة (٢) من الاتّفاقيّة الخاصّة باحالة الخلاف الى محكمة العدل الدولية ، الموقعة بين حكومتينا بفاليتا بتاريخ ٢٤ جمادى الاولى ١٣٩٦ هـ. الموافق ٢٣ مايو ١٩٧٦ م.

لي الشرف ان اقترح ان يكون ممثّلو جمهورية مالطا اوّل من يتكلّم في المرافعات الشفهيّة .

فان لاقى هذا الاقتراح قبولا لدى حكومة سعادتكم ، فان هذه الرّسالة وردّ سعادتكم عليها بتأكيد هذا الاقتراح ، ستشكّل اتفاقا بين حكومتينا بالخصوص ، ويعتبر جزء لا يتجزأ من الاتّفاقيّة الخاصة المشار اليها اعلاه " .

اتشرف ان اوكّد لكم موافقة حكومة الجمهورية العربية الليبية على ما يرد بها .

وتفضّلوا بقبول وافر الاحترام ...

طه الشّريف بن عامر

وزير الدّولة لشئون مجلس قيادة الثّورة
الجمهورية العربيّة الليبيّة

بتا ٢٤ جمادى الاولى ١٣٩٦ هـ.
وافق ٢٣ مايو ١٩٧٦ م.

احب السعادة وستن ابيلا
وزير التنمية
...

٢٣ مايو ١٩٧٦ م٠

يا صاحب السّعادة ،

أتشرّف بان اشير الى الفقرة (٣) من المادة (٢) من الاتفاقيّة الخاصّة باحالة الخلاف الى محكمة العدل الدّوليّة ، الموقعة بين حكومتينا بفاليتا بتاريخ ٢٤ جمادى الاولى ١٣٩٦ هـ ٠ الموافق ٢٣ مايو ١٩٧٦ م٠

لي الشّرف أن اقترح ان يكون ممثّلوا جمهوريّة مالطا اوّل من يتكلّم في المرافعات الشّفهيّة ٠

فان لاقى هذا الاقتراح قبولا لدى حكومة سعادتكم ، فان هذه الرّسالة وردّ سعادتكم عليها بتأكيد هذا الاقتراح ، ستشكّل اتّفاقا بين حكومتينا بالخصوص ، ويعتبر جزء لا يتجزأ من الاتفاقيّة الخاصّة المشار اليها اعلاه ٠

وتفضّلوا ياصاحب السعادة بقبول فائق تقديراتي ٠

Wistin Abela

وستن ابيلا
وزير التنمية
جمهوريّة مالطا

3. PROCÈS-VERBAL OF THE EXCHANGE OF INSTRUMENTS OF RATIFICATION OF THE SPECIAL AGREEMENT BETWEEN THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA AND THE REPUBLIC OF MALTA FOR THE SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE OF DIFFERENCE

In the city of Valletta, on 25 Jumadi al-Ula 1391 P.D., corresponding to 20 March 1982, Mr. Abdulati Ibrahim El-Obeidi, Secretary of the People's Committee of the Popular Bureau for Foreign Liaison of the Socialist People's Libyan Arab Jamahiriya and Dr. Alex Sceberras Trigona, Minister of Foreign Affairs of the Republic of Malta, exchanged the Instruments of Ratification of the Special Agreement between the two countries concerning the submission to the International Court of Justice of Difference.

In confirmation of the foregoing, they signed the present Procès-Verbal in the Arabic and English languages both texts being equally authentic.

(Signed) Abdulati Ibrahim EL-OBEIDI,
Secretary of the People's Committee
of the Popular Bureau for
Foreign Liaison.

(Signed) Alex Sceberras TRIGONA,
Minister of Foreign Affairs
of the Republic of Malta.

الجماهيريه العربيه الليبيه الشعبيه الاشتراكيه
اللجنه الشعبيه
للمكتب الشعبي للاتصال الخارجي

محضر تبادل وثائق التصديق على الاتفاقيه الخاصه باحالة الخلاف الى محكمة العدل الدوليه

بين

الجماهيريه العربيه الليبيه الشعبيه الاشتراكيه

وجمهوريه مالطا

تم بمدينة فاليتا بتاريخ ٢٥ جمادى الاولى ١٣٩١ من وفاة الرسول الموافق ٢٠ مارس ١٩٨٢ م بين كل من السيد عبد العاطى ابراهيم العبيدى امين اللجنه الشعبيه للمكتب الشعبى للاتصال الخارجى بالجماهيريه العربيه الليبيه الاشتراكيه والدكتور اليكس شيبراس تريقونا وزير الشئون الخارجيه لجمهوريه مالطا . تبادل وثائق التصديق على الاتفاقيه الخاصه باحالة الخلاف بين البلدين الى محكمة العدل الدوليه .

واثباتا لما تقدم فقد وقعا هذا المحضر من نسختين باللغتين العربيه والانجليزيه كلاهما متساو فى القوة القانونيه .

Alex Sceberras Trigona
الدكتور اليكس شيبراس تريقونا
وزير الشئون الخارجيه
بالجمهوريه المالطيه

عبد العاطى ابراهيم العبيدى
امين اللجنه الشعبيه للمكتب الشعبى
للاتصال الخارجى بالجماهيريه العربيه
الليبيه الشعبيه الاشتراكيه

4 AND 5. INSTRUMENTS OF RATIFICATION

I, Abdulati Ibrahim El-Obeidi, Secretary of the People's Committee of the Popular Bureau for Foreign Liaison of the Socialist People's Libyan Arab Jamahiriya, having regard to the ratification by the Basic Popular Congress in their Ordinary Session for the year 1980 of the Special Agreement between the Socialist People's Libyan Arab Jamahiriya and the Republic of Malta for the submission to the International Court of Justice of Difference signed in Valletta on 24 Jumadi Al-Ula 1396 H. corresponding to 23 May 1976.

I declare the Socialist People's Libyan Arab Jamahiriya's ratification of the above-mentioned Agreement.

In witness thereof, I have signed this instrument and affixed thereto the Seal of the People's Bureau for Foreign Liaison.

Done at Tripoli, 24 Jumadi Al-Ula 1391 P.D. corresponding to 19 March 1982.

(Signed) Abdulati Ibrahim EL-OBEIDI,
Secretary of the People's Committee
of the Popular Bureau for Foreign Liaison.

I, Dom Mintoff, Prime Minister and Minister of Commonwealth and Foreign Affairs of the Republic of Malta, declares that the Special Agreement between the Government of the Republic of Malta and the Government of the Libyan Arab Republic for the Submission to the International Court of Justice of Difference, signed at Valletta on the 23rd May, 1976, is ratified by the Government of the Republic of Malta as required by Article IV of the said Agreement.

Signed and sealed with the Seal of the Ministry of Commonwealth and Foreign Affairs in Valletta, Malta, this 28th day of May, one thousand nine hundred and seventy-six.

(Signed) Dom MINTOFF.

انا د وم منتوف رئيس الوزراء ووزير الشئون الخارجيه والكومنولث بجمهورية مالطا أعلن بأن الاتفاقيه الخاصه بين حكومة جمهورية مالطا وحكومة الجمهورية العربيه الليبيه الشعبيه الاشتراكيه للاحالة الى المحكمة الدوليه للعدل والموقعه بمدينة فاليتا فى ٢٣ مايو ١٩٧٦م ، قد تم التصديق عليها من طرف حكومة جمهورية مالطا طبقا للمادة الرابعه من الاتفاقيه المذكوره

وتم التوقيع والختم بختم وزارة الشئون الخارجيه والكومنولث بمدينة فاليتا فى ٢٨ مايو ١٩٧٦م

د وم منتوف

الجماهيريه العربيه الليبيه الشعبيه الاشتراكيه
اللجنه الشعبيه
للمكتب الشعبي للاتصال الخارجي

وثيقة تصديق

أنا عبد العاطي ابراهيم العبيدي أمين اللجنه الشعبيه للمكتب الشعبي للاتصال الخارجي بالجماهيريه العربيه الليبيه الشعبيه الاشتراكيه بعد الاطلاع على تصديق المؤتمرات الشعبيه الاساسيه في دور انعقادها العادي لعام ١٩٨٠م على الاتفاقيه الخاصه باحالة الخلاف الى محكمة العدل الدوليه بين الجماهيريه العربيه الليبيه الشعبيه الاشتراكيه وجمهورية مالطا ،
الموقعه في فاليتا بتاريخ ٢٤ جمادى الاولى ١٣٩٦ هـ الموافق ٢٣ مايو ٧٦م

أعلن تصديق الجماهيريه العربيه الليبيه الشعبيه الاشتراكيه على الاتفاقيه المذكوره اعلاه .

واثباتا لما تقدم وقعت وختمت وثيقة التصديق هذه بختم المكتب الشعبي للاتصال الخارجي .

حررت بطرابلس
بتاريخ ٢٤ جمادى الاولى ١٣٩١ من وفاة الرسول
الموافق ١٩ مارس ١٩٨٢م

عبد العاطي ابراهيم العبيدي
امين اللجنه الشعبيه للمكتب الشعبي
للاتصال الخارجي

MEMORIAL
OF THE LIBYAN ARAB JAMAHIRIYA

MÉMOIRE
DE LA JAMAHIRIYA ARABE LIBYENNE

VOLUME I

INTRODUCTION

1. This Memorial is filed in accordance with the Order made by the Vice-President of the Court in the present case on 27 July 1982 fixing 26 April 1983 as the time-limit for the filing of Memorials by the Socialist People's Libyan Arab Jamahiriya (hereinafter referred to as "Libya"[1]) and the Republic of Malta (hereinafter referred to as "Malta"). The Order was made having regard to Article 40 and Article 48 of the Statute of the Court and to Article 13, paragraph 3, Article 44, and Article 46 of the Rules of Court, and taking into account the Special Agreement between Libya and Malta signed at Valletta on 23 May 1976 by which the Parties agreed to have recourse to the Court concerning the question of the delimitation of the areas of continental shelf appertaining to each of the two States.

2. The Special Agreement was signed on 23 May 1976[2] and Instruments of Ratification were exchanged in Valletta on 20 March 1982[3]. In accordance with Article IV of the Special Agreement, it was jointly notified to the Court on 26 July 1982 by letter dated 19 July 1982 from the Secretary of the People's Committee of The Popular Bureau for Foreign Liaison of Libya and the Minister of Foreign Affairs of Malta[4]. The notification was filed in the Registry of the Court on the same day.

3. The joint letter of notification transmitted a certified copy of the Special Agreement in both the Arabic and English languages. Under the terms of the Special Agreement, the Arabic and English texts are equally authentic.

4. The English text of the Special Agreement reads as follows[5]:

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[1] The term "Libya" refers to the State of Libya and its political institutions, whatever their form at the relevant time and, as may appear from the context, also to the territory which now belongs to the Socialist People's Libyan Arab Jamahiriya. It should also be noted that the "Libyan Arab Republic" as referred to in the Special Agreement became the Socialist People's Libyan Arab Jamahiriya on 2 March 1977.

[2] A copy of each of the Arabic and English texts of the Special Agreement is attached as *Annex 1*.

[3] A copy of the Instruments of Ratification is attached as *Annex 2*.

[4] A copy of this letter is attached as *Annex 3*.

[5] References in this Memorial to the text of the Special Agreement are to the English text.

"Special Agreement Between the Government of the Republic of Malta and the Government of the Libyan Arab Republic for the Submission to the International Court of Justice of Difference

[See pp. 5-6, supra*]*

5. Article I of the Special Agreement defines the role assigned to the Court in this case[1]. It requests the Court to decide:

> "What principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic ...".

Article I also requests the Court to decide —

> "... how in practice such principles and rules can be applied by the two Parties in this particular case in order that they may without difficulty delimit such areas by an agreement as provided in Article III."

6. Article II of the Special Agreement deals with the procedural aspects of the case in the manner envisioned by Article 46(1) of the Rules of Court. In addition to providing for the time-limits for the simultaneous submission of written pleadings, Article II(3) states that "... the question of the order of speaking at the oral hearings shall be decided by mutual agreement between the Parties ...". In this connection, the Maltese Minister of Development and the Libyan Minister of State for Revolutionary Command Council Affairs exchanged letters on 23 May 1976 by which the Maltese Minister of Development indicated that at the oral hearings the representatives of the Republic of Malta would speak first and the Libyan Minister of State indicated his acceptance of this proposal. Copies of these letters are attached as ***Annex 4***.

7. In accordance with Article 49 of the Rules of Court, this Memorial is divided into the following parts:

> Part I contains a statement of the facts beginning with a brief outline of the history of Libya and Malta and followed by the general geographical, geomorphological and geological setting of the dispute. Against this setting, the historical background to the dispute is then taken up.
>
> Part II contains a statement of the law, including an analysis of the provisions of the Special Agreement.

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[1] **The provisions of the Special Agreement will be discussed in Chapter 5 below.**

In Part III, the Memorial applies the principles and rules of international law discussed in Part II to the physical factors and relevant circumstances of this case.

Following Part III appear Libya's Submissions to the Court made in accordance with Article 49 of the Rules of Court.

PART I

THE FACTUAL BACKGROUND

CHAPTER 1

LIBYA AND MALTA: HISTORICAL ASPECTS

1.01 Libya became an independent State on 24 December 1951 and Malta achieved independence on 24 September 1964. Although the histories of Libya and Malta may only have an indirect bearing at this stage in the pleadings, a brief look at the history of each country up to independence as well as of the subsequent relations between them does provide a useful background to an understanding of the dispute[1].

1.02 In view of the long history of each State it is notable that, since Malta's independence, and particularly since the early 1970s, Libya and Malta have enjoyed a close relationship marked by many forms of assistance and cooperation. Libya considers that this dispute and some of the friction that has resulted from it must be viewed in the general context of cooperation, assistance and goodwill that has characterised relations between the two States.

1.03 During the Classical and pre-Classical periods, that is during the time when Greece, Carthage and Rome dominated the Mediterranean world, the experiences of Libya and Malta were quite similar in many respects. However, from the middle of the 11th Century AD, their histories started to diverge.

1.04 After a period of Islamic rule and Norman occupation, Malta fell under Spanish rule — in 1282. For almost 250 years it was controlled by Viceroys in Sicily who were appointed by the sovereigns of Aragon and, later, of Castile, until Charles V came to the Spanish throne. Under the Aragonese, Malta became an integral element in the Aragonese trading empire which stretched from the northern Mediterranean shores down to North Africa. It also became an important corsairing base, acting as a sort of border defense of Aragon's Sicilian possessions[2].

1.05 The Maltese Islands underwent a dramatic change in domestic agriculture during this time, turning from food production to cotton production, with most of the cotton being exported to Sicily and Aragon. In return, the Islands became dependent on Sicily for food, a pattern of dependency that was to continue for hundreds of years[2]. Tripolitania, dominated by the city of Tripoli, had become a major outpost of the trans-

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[1] Detailed accounts can be found in:

Blouet, Brian, *The Story of Malta*, Valletta, Progress, 1981.

Wright, John, *Libya*, London, Benn, 1969.

Abun-Nasr, Jamil M., *A History of the Maghrib*, Cambridge, Cambridge University Press, 1971.

Godechot, Jacques, *Histoire de Malte*, Paris, Presses Universitaires de France, 1981.

[2] Braudel, Fernand, *The Mediterranean and the Mediterranean World in the Age of Philip II*, London, Fontana/Collins, 1972.

Saharan trade routes that brought goods from West and Central Africa and the Fezzan for trade with the North African littoral and, via Cyrenaica, with Egypt and the Middle East, as well as later on with Europe.

1.06 At the start of the 16th Century, Spain and Portugal sought to extend their control over the Mediterranean and to establish themselves in Africa. In 1510, Spain occupied Tripoli. Meanwhile the Ottoman Empire expanded westwards into North Africa, appearing in Egypt in 1517. In 1523, the Ottomans forced the Knights of the Order of St. John of Jerusalem out of their island fortress of Rhodes and, as a result, Charles V offered Malta to the Knights as a new base in 1530, provided that they also took on the defence of Tripoli against the advance of Ottoman sea power. The Order reluctantly accepted, but in 1551 it gave up the futile attempt to hold Tripoli and withdrew definitively to Malta.

1.07 In 1565 came the unsuccessful Great Siege of Malta by Ottoman forces. The failure of the siege, together with the Battle of Lepanto, persuaded the Ottoman Empire that naval control of the Central and Western Mediterranean was beyond its power and Malta settled down to become an active corsairing base where the Maltese corsairs were joined by privateers from western and southern Europe. As time went by, the major naval powers of France and England began to take an interest in Malta, particularly in the 18th Century.

1.08 By the opening of the 19th Century, the picture had changed. Corsairing ended as Mediterranean trading patterns became controlled by Britain, France and Holland. Imperial considerations began to dominate the scene, for the Mediterranean was seen increasingly as an essential pathway to India and the East.

1.09 In 1798 came the Napoleonic invasion of the Maltese Islands, as a preliminary to the invasion of Egypt. It led to the final explusion of the Order. The French were soon themselves evicted, and in 1800 England established a *de facto* protectorate over the Islands which soon hardened into full colonial control[1]. Close commercial relations then began to develop between Libya and Malta for the first time since the 15th Century, and a Maltese merchant colony grew up in Tripoli[2]. Tripoli became a major supplier of meat and cattle to Malta, and Libya became an increasingly favoured site for Maltese immigration, as did the other North African States, particularly after the French occupations of Algeria in 1830 and Tunisia in 1881.

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[1] BLOUET, *op. cit.*

[2] FOLAYAN, Kola, ***Tripoli during the reign of Yusuf Pasha Qaramanli***, Ile-Ife, University of Ife Press, 1979.

1.10 In 1835 the Ottomans reasserted their authority over Libya and set up an effective administration along the entire littoral from the Egyptian border to Tunisia. Ottoman control over Libya was to last until the Italian occupation of Tripoli in 1911 as a prelude to the occupation of the whole country. After World War I, Italy lost control of her new colony and only subdued Libya again after a series of bitter campaigns at the end of the 1920s. In 1939 the territory of Libya was incorporated into metropolitan Italy.

1.11 Meanwhile, Malta in the 19th Century changed from an entrepôt for British trade during the Napoleonic Wars to a bunkering station for steam shipping. It also became a convenient and congenial location for British naval personnel with the use of the English language widespread amongst the indigenous community, and even British royalty took an interest in Malta. This placid scene was to continue until the 1930s. From 1939 onwards, with the Second World War in full spate, Malta was placed in a precarious position. In reality, it depended as in the past on supplies from outside to sustain itself. It would have fallen but for the heroism of its population and of the military personnel stationed there. In addition, the Axis Powers decided to bypass the islands and called off an attempt at invasion. For them, the main battleground was North Africa — in Libya, Tunisia and Egypt.

1.12 In 1943, Italian and German forces were driven out of Libya, and the north of the country was placed under the British military administration with the south controlled by Free French units. Under the Italian Peace Treaty of 1947, Italy formally renounced title to Libya whose future was referred to the United Nations. On 24 December 1951, Libya was established as a united kingdom with a federal constitution, thus marking the emergence of Libya as an independent State. On 27 April 1963, the federal constitution was abolished and Libya became a unitary State. On 1 September 1969, the King was deposed and Libya became the Libyan Arab Republic. On 2 March 1977, it was proclaimed the Socialist People's Libyan Arab Jamahiriya.

1.13 On 21 September 1964 the independence of Malta was proclaimed, with direction and control of the government exercised by a Maltese Cabinet and Prime Minister. Britain retained her defence interests in return for a rent spread over 10 years. As a result of the 1972 elections in Malta and with the rapid decline in defence spending by Britain in the early 1970s, the defence agreement with Britain was renegotiated so that British forces would leave by 1979. In 1974, Malta became a Republic with executive authority vested in its President. It remained within the British Commonwealth.

CHAPTER 2

THE GEOGRAPHICAL SETTING

Introduction

2.01 The geographic relationship of States is of primary importance in maritime delimitations. This point can be simply demonstrated; for example, a State situated by itself in a large expanse of ocean is not subject to the same geographic constraints as are States in the Mediterranean Sea where their geographic position and relationship with neighbouring States are of special significance in effecting an equitable delimitation of bordering continental shelf areas. This fact is made further evident where there are islands lying in a narrow sea surrounded by other islands as well as by continental States, another characteristic of the Mediterranean.

2.02 As will become apparent in this Memorial, geographic factors have been closely intertwined with the history of the region of interest in this case, making it useful to consider the pertinent facts of history and geography together in this first part of the Memorial. Similarly, the facts of geography and of land and sea morphology are so closely linked that no strict separation of geomorphology from geography will be maintained here. However, the related aspects of geomorphology and geology will be the primary concern of the next Chapter.

2.03 This Chapter will deal first with geography in the broad setting of the Mediterranean Sea. The focus will then be narrowed to consider the geographic characteristics of the Central Mediterranean and, finally, of Libya and Malta individually and in relation to each other. In the next Chapter the physical factors of geomorphology and geology will be taken up in the light of the geographical setting. In giving this general setting and in describing the physical factors, an effort will be made to be as factual as possible and to leave the legal arguments essentially to Parts II
① and III. General maps, such as *Map 1*, are used in this Part I simply for the purpose of illustrating the wider context of the dispute.

A. The Mediterranean Sea

1. General Description

① 2.04 *Map 1* shows the entire Mediterranean Sea and may be useful to refer to in the discussion that follows. A glance at this map shows the Mediterranean to be a long, narrow and crowded sea with a length of slightly over 2,000 nautical miles and, at its widest point between the Strait of Otranto and the Libyan coast, a width of just under 600 nautical miles.

2.05 Libya and Malta[1] comprise two of the many States and islands that abut on the Mediterranean. The location of the area for delimitation between them again points out the importance of the relationship of the Parties to other States and islands in the area from the standpoint of delimitation.

2.06 The Mediterranean is a sea ringed with mountains except for that part in the south where the great Sahara plateau comes up to meet the sea. It is also an area characterised by a relatively homogeneous climate when compared, for example, to a great ocean like the Atlantic. The only natural openings of the Mediterranean are to the Atlantic through the Strait of Gibraltar and to the Black Sea through the Turkish Straits.

2.07 On the north, great peninsulas — Spain, Italy, Greece — run into the sea and effectively divide it. The waters between these peninsulas and within the relatively narrow divide of the Mediterranean Sea are dotted with islands, large and small; populated and barren; States and dependencies; volcanic and non-volcanic. There are some whose political status has often changed over a turbulent past: others have changed not only politically but physically as well, with a few having partially or totally vanished beneath the sea[2]. It is the presence of these peninsulas and islands, combined with the proximity of the continental landmasses across this narrow sea, that imparts to the Mediterranean one of its most distinctive characteristics. For if one were to sail throughout the Mediterranean's length and breadth, at no point on that voyage would land be more than 184 nautical miles away.

2.08 It is also striking how different the southern coast of the Mediterranean is from the northern. The southern coast is relatively uniform, running generally east/west with only one major indentation—from Cape Bon on the Tunisian coast along the Libyan coast to approximately Benghazi in eastern Libya. The northern coast, on the other hand, is convoluted. Between the peninsulas and island groups are inner seas: to the west of Italy, the deep basin of the Tyrrhenian Sea between the mainland and the islands of Corsica and Sardinia; to the east of Italy, running north to Venice and Trieste, the long, narrow and relatively shallow Adriatic Sea. Still further east, Greece is bordered by the large, deep basin of the Ionian Sea on its west and by the Aegean Sea with its multitude of islands on its east. Consequently, the coasts of the States to the north face in a wide variety of directions. Very little of mainland Italy faces to the south, for example. Similarly, much of the continental coast of Greece faces either east or west. In contrast, most of the southern littoral of the Mediterranean faces generally northward.

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[1] Throughout this Memorial, when speaking of "Malta", it is the State of Malta that is meant. The Island of Malta itself will be so identified in the text to distinguish it from the State.

[2] *E.g.*, in 1831, the small island of Julia in the Strait of Sicily entirely vanished.

① 2.09 It may be seen from *Map 1* that, aside from the inner seas of the north coast of the Mediterranean, the Mediterranean Sea itself is formed of a number of smaller seas. From west to east these are: the Alboran Sea, the Balearic Sea, the Ligurian Sea, the Tyrrhenian Sea, the Ionian Sea and the Sea of Crete. Some of these seas are relatively deep if compared, for example, with a shallow sea such as the North Sea or with the Arabian-Persian Gulf. The Alboran Sea between Morocco and Spain is bordered on the west by the Strait of Gibraltar. Through this narrow Strait (only 8 nautical miles wide) the ocean water of the Atlantic enters and the more saline Mediterranean water leaves, in part maintaining the equilibrium of the Mediterranean Sea as regards both salinity and temperature.

2.10 The Malta and Medina Channels[1], south of Malta, perform a somewhat analogous role for the eastern Mediterranean and serve as an important route for the passage of a saline eastern Mediterranean water mass known as the Levantine Intermediate Layer. This ocean-type current flows in a strong near-bottom layer from east to west via the Malta and Medina Channels and the Pantelleria, Malta and Linosa Troughs[1]. As it impinges upon the seafloor, it generates large sediment waves in the floors of the Channels. Exiting from the Mediterranean through the Strait of Gibraltar, the current produces an important warm intermediate layer stretching over a broad section of the Atlantic. The area between the westward-flowing Levantine Intermediate Layer and the overlying eastward-flowing layer of ocean water from the Atlantic forms a zone where plankton is concentrated and which is, hence, rich in fisheries[2].

2.11 With respect to the waters of the Mediterranean, one other matter may be noted. Because of its relatively small size, the narrowness of its openings, the slow rate of rejuvenation of its waters (taking almost a century) and the intensity of its maritime traffic, the Mediterranean is especially vulnerable to the risks of pollution. Recognition by coastal/riparian States of this dangerous level of vulnerability led to cooperative action to reduce pollution, regularised by several international agreements entered into at Barcelona on 16 February 1976, and further complemented by the Athens Protocol of 16 May 1980[1] and the Geneva Protocol of March 1982.

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[1] These features are discussed in greater detail at paras. 3.12 through 3.20 below. Their ② location may be found by reference to *Map 2* facing p. 16 and *Map 6* facing p. 26.

[2] See WÜST, G.: "On the Vertical Circulation of the Mediterranean Sea", *Journal of Geophysical Research*, Vol. 66, No. 10, 1961, pp. 3261-3271 at pp. 3261-3264. (A copy of these pages is attached as *Annex 5*.) LACOMBE, H. and TCHERNIA, P.: "Caractères Hydrologiques et Circulation des Eaux en Méditerranée" (1971), a paper in *The Mediterranean Sea: A Natural Sedimentation Laboratory*, edited by STANLEY, Daniel J., Stroudsburg, Pennsylvania, Dowden Hutchinson & Ross, 1972; STANLEY, D.J., MALDONADO, A. and STUCKENRATH, R., "Straits of Sicily Depositional Rates and Patterns, and Possible Reversal of Currents in the Late Quaternary", *Journal of Paleography, Paleoclimatology and Paleoecology*, Vol. 18, 1975, pp. 279-291 at pp. 288-289. (A copy of these pages is attached as *Annex 6*.)

2.12 For much of the Mediterranean only a relatively narrow rim of shallow sea-bed exists around the continental landmasses and the islands. In some parts, however, the rim of shallow sea-bed is much wider: for example, in the Gulf of Lions, south of the Languedoc region of France; off the coastal area of Valencia and Alicante in Spain; in all but the southern part of the Adriatic Sea to the east of Italy; and the areas between Tunisia and Libya. A rim of shallow sea-bed also projects from Sicily toward Cape Bon along the Adventure Bank and, further to the east, from the southern tip of Sicily southward along the Ragusa-Malta Plateau[2].

2.13 Before passing from the Mediterranean Sea in its full extent to the region of the Central Mediterranean, the area which is of special pertinence to this case, a brief look will be taken at some of the Mediterranean islands. On the far west, only 120 nautical miles from the middle of the Strait of Gibraltar, lies the very small, flat Spanish island of Alboran (less than one square kilometre in area with a total coastline of under one kilometre). It is located in the Alboran Sea, almost halfway between Spain and Morocco.

2.14 Further to the east between Spain and Algeria are the two major groups of Balearic Islands. To the southwest lie Ibiza (with an area of 572 square kilometres, a total coastline of 153 kilometres and a population of approximately 45,000) and Formentera (with an area of 76 square kilometres, a total coastline of 75 kilometres and a population of 3,500). To the northeast lie the larger Islands of Majorca and Minorca. The relevant statistics for each are: Majorca — 3,639 square kilometres with 428 kilometres of coastline and a population of approximately 400,000; Minorca — 702 square kilometres with 158 kilometres of coastline and a population of approximately 50,000[1]. Unlike the Maltese Islands, which are situated on the geomorphological extension of the Sicilian landmass, the two groups of Balearic Islands each sit on a separate geomorphological plateau and not on a promontory or extension of the adjoining landmass (in this case, Spain).

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[1] See *Mediterranean Action Plan and the Final Act of the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea*, United Nations, New York, 1978; *Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea Against Pollution from Land-Based Sources, May 1980, Final Act and Protocol*, United Nations, New York, 1980.

[2] These areas are most clearly visible on *Map 2* facing p. 16. *Map 2* is a reduced copy of Sheet 8 of the International Bathymetric Chart of the Mediterranean. A larger but still somewhat reduced copy of this Chart may be found in the pocket section of Volume III of this Memorial. More will be said of this map and the manner of its preparation at para. 3.03 below and in Part I of the *Technical Annex*. As for the use of the term "Ragusa-Malta Plateau" to describe the feature identified on *Map 2* as the "Malta Plateau", see fn. 1 to p. 28.

2.15 Next, looking eastward, are the large islands of Corsica and Sardinia and the smaller island of Elba. Together, Corsica and Sardinia form a north/south division of the Mediterranean roughly midway between the Balearic Islands and Italy. They lie due south of Genoa and due north of the frontier between Algeria and Tunisia. Corsica and Malta have about the same population, but Corsica is far larger (8,835 square kilometres with a coastal length of 670 kilometres). It is a *région* of the Republic of France and is composed of two *départements*. Unlike Sardinia to the south, but like Malta, the fishing activity of Corsica is on a small scale.

2.16 Sardinia is a special autonomous region of Italy with its own parliament empowered to enact local laws, taxes and administrative regulations. It shares its submarine platform with Corsica. It is the second largest Mediterranean island (24,090 square kilometres with a coastal length of 1,045 kilometres) and also has a substantial population: 1,600,000. Its industry is now well-developed, but fishing, especially tuna, lobster, coral and shellfish, remains important. Elba, which lies between Corsica and Italy, is much closer to the size of Malta (223 square kilometres) though less populated (approximately one-tenth the inhabitants of the Maltese Islands). Now a part of Italy, Elba was a sovereign principality under Napoleon I in 1814-15.

2.17 Although Sicily will be mentioned in many parts of this Memorial, particularly with regard to Malta's close physical connection with it, certain aspects of the island are appropriate to mention here. Sicily is the largest (25,708 square kilometres) and most populous (5,000,000) island in the Mediterranean. It has a coastline some 978 kilometres long, along which approximately one-half of its population lives. Like Sardinia, it is a special autonomous region of Italy with its own regional parliament. Similarly, Malta will be discussed further along in this Chapter (starting at paragraph 2.24) where a detailed geographic description of the Maltese Islands is set forth. For present purposes it is sufficient to note that the Maltese Islands together have a total area of about 315 square kilometres, a coastline measured around the Islands of Malta and Gozo of roughly 185 kilometres and a population of approximately 320,000.

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[1] With its capital city of Mahon, an important naval port lying due south of Marseilles, Minorca was developed as a base in the Mediterranean a century before Malta.

2.18 Crete and Cyprus, located in the Eastern Mediterranean, are among the largest islands of the entire Mediterranean as seen from the comparative statistics given in the Tables found at pages 140 and 141 below. Finally, the island of Imroz, situated slightly to the north of the entrance to the Dardanelles and east of the Greek Islands of Samothrace and Lemnos, might be mentioned. Though somewhat smaller than the Maltese Islands[1] and with a small population (approximately 7,000), its location is noteworthy in considering the various Mediterranean islands.

2.19 This discussion of Mediterranean islands has by no means been exhaustive. It does, however, serve to illustrate the wide variety of islands, in terms of size, population, location and other factors that are to be found in the Mediterranean. Other islands, such as the Pelagian Islands of Italy and the Kerkennah Islands and Djerba of Tunisia are omitted here, but discussed elsewhere in this Memorial[2].

2. The Central Mediterranean

2.20 Looking more closely at the geography, it is apparent that the Mediterranean Sea may be divided into three zones: a Western, a Central ① and an Eastern Mediterranean. This can be quite clearly seen on *Map 1*. It is the Central Mediterranean that concerns us in this case[3]. The Central Mediterranean extends roughly between Tunisia on the west; Sicily, the southern tip of the Italian mainland (Calabria) and the Strait of Otranto on the north; the west coast of Greece with its islands on the east; and the entire Libyan coast up to approximately Ras Amir, visible on ① *Map 1*, on the south. It encompasses the Ionian Sea on the east and the Pelagian Sea on the west[4]. The western part of the Central Mediterranean, that is the area between Tunisia, Libya and Sicily — and comprising the Kerkennah Islands, Djerba, the Italian Islands of Pantelleria, Lampedusa, Linosa and Lampione, and Malta — is the area of particular interest for present purposes. But in considering smaller scale and even local features, sight should not be lost of the overall character of the Mediterranean with its similarities to and differences from the particular situation here.

2.21 One point of particular interest in the Central Mediterranean is that part of the Sicilian coastline facing generally southwest onto this Sea.

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[1] See the Tables at pp. 140 and 141 below.

[2] See, for example, para. 9.22 below, and the Tables at pp. 140 and 141 below.

[3] The Central Mediterranean may be seen in greater detail on *Map 5* facing p. 22.

[4] There is no uniform practice regarding the division of the Mediterranean into three zones, and frequently a Central Mediterranean zone is not reflected in atlases and in the literature. Valid as this division may be geographically and geologically, it should not obscure the substantial differences between the shelf areas of the Pelagian Sea and the Ionian Sea geographically, geomorphologically and geologically which will be mentioned in Chapter 3 below.

It fronts on the Strait of Sicily[1] and forms the northern boundary to the Central Mediterranean in this area. The coast itself is relatively uncomplicated: it runs in a fairly straight line from northwest to southeast. The direction of this coastline parallels the "grain", that is, the direction of the main geographical, geomorphological and geological features of the Strait of Sicily (used in its broader sense). The "grain" can be seen quite clearly on *Map 2*. The axis of the Maltese Islands follows this northwest/southeast direction, a geographical as well as a geological point of cardinal importance. As will be seen in more detail in the next Chapter, the Pantelleria, Malta and Linosa Troughs also follow this northwest/southeast trend.

2.22 Off the southwest coast of Sicily, where it faces Cape Bon and the Strait of Sicily, there extends a complex of submarine banks and shoals known as the Adventure Bank. Similarly, off the southeast coast of Sicily lies an even larger shallow bank, the Ragusa-Malta Plateau[2]. The morphological extent of both of these features is visible on *Map 2*. It is on the southwestern edge of the Ragusa-Malta Plateau that the Maltese Islands are perched. The Island of Gozo with its westerly escarpment forms a sort of promontory of this Plateau to the west. Between the Adventure Bank and the Ragusa-Malta Plateau lies a slightly deeper area, although not nearly as deep as the troughs lying immediately to its south, which is characterised by a number of localised highs. This area is known by geologists as the Gela Basin[3], and may also be seen on *Map 2*.

2.23 Taken together, these three features in effect represent the underwater extension of the Island of Sicily. All three are distinctly limited on the south and southwest by a series of steep depressions which stand out clearly on *Map 2*. These are the Pantelleria, Malta and Linosa Troughs mentioned above. As the map illustrates, the easternmost of these features, the Ragusa-Malta Plateau, is also sharply cut off in the east by the Sicily-Malta Escarpment. To the south of the Plateau are the Malta and Medina Channels which run roughly east/west.

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[1] The term "Strait of Sicily" is used in the scientific literature in several ways. In an oceanographic and geographic sense, it is the narrow passage between Cape Bon in Tunisia and Marsala in Sicily. However, the term is often used more extensively to cover part of the Central Mediterranean consisting of the area of the troughs and channels comprising the Rift Zone discussed in Chapter 3 below. In this Memorial, the narrow oceanographic definition will generally be followed although occasionally the broader geomorphological usage will also be employed, particularly in the papers in the *Technical Annex*. Another term, "Sicilian Channel" or "Chenal de Sicile" is also used to describe the Rift Zone (see, *e.g.*, WINNOCK, E.: "Structure du bloc pélagien", in *Sedimentary Basins of Mediterranean Margins*, edited by WEZEL, F.C., C.N.R. Italian Project of Oceanography, Tecnoprint, Bologna, 1981, pp. 445-464 at p. 453). (A copy of this page is attached in *Annex 7*.)

[2] See fn. 1 to p. 28 below.

[3] In his recent study (see Part III, *Technical Annex* and fn. 1 to p. 34 below), Finetti refers to the area off Central Sicily as the Caltanissetta Basin of which the Gela Basin or, in his paper, the "Gulf of Gela" is the southern, seaward portion.

B. Libya and Malta: Geographical Aspects

1. Malta

2.24 With the completion of this "tour d'horizon" of the Mediterranean and the Central Mediterranean, it is now appropriate to turn to a detailed examination of Malta and Libya. The territory of Malta comprises an island group: the Island of Malta (246 square kilometres in area), Gozo (66 square kilometres), Comino (2.7 square kilometres), Cominotto (less than one-tenth of a square kilometre); and Filfla, a rock[1]. Thus, the Maltese Islands taken together have a total area of about 315 square kilometres. The population of Malta (that is, of the island group) is approximately 320,000. The length of coast measured around the Islands of Malta and Gozo, and taking into account their indentations, is roughly 185 kilometres.

① 2.25 As may be seen from *Map 1*, the Maltese Islands lie some 44 nautical miles south of Sicily and 185 nautical miles north of Tripoli. The 36°N parallel passes between the main Island of Malta and Gozo, which lie between the 14°E and 15°E meridians. They are 158 nautical miles northeast of Tunisia, whereas the nearest landfall to the east on the Greek mainland is 340 nautical miles distant. The central location of the Maltese Islands in the Mediterranean is brought home by the fact that Malta is 961 nautical miles from Gibraltar and 927 nautical miles from Port Said.

2.26 While it is a straightforward task to describe Malta's location in the Mediterranean and its size and population, it is more difficult to undertake a detailed description of Maltese coastal geography in comparison to that of Libya. The problem is one of scale: it is a problem that can ① be readily illustrated by referring back to *Map 1*.

2.27 Using this map, the general characteristics of the Libyan coast from Ras Ajdir, for example, to Ras Zarrouq can be described fairly simply. This particular stretch of coast is over 400 kilometres long. ① *Map 1* also gives a good idea of the direction in which this coast faces: that is, generally to the north. But if one turns to the Maltese Islands and their coasts, they are practically impossible to gauge on this scale. From ① *Map 1*, in what direction could the coasts of Malta be said to face?

2.28 Consequently, in order to examine Maltese coastal geography — an exercise which is important inasmuch as it is from the coast that Malta's continental shelf must extend— a relatively large-scale map must be consulted[1]. *Map 3* is such a map. The coastal geography appearing on this map is taken from the United States Defense Mapping Agency Chart No. 53203 (1977). As indicated, its scale is 1:150,000 as opposed to the ① scale of 1:9,186,000 of *Map 1*, so that a feature on *Map 3* appears over sixty times larger than the same feature on *Map 1*. (For the convenience of the Court, place names in Malta referred to in the following paragraphs of this Memorial have been indicated on *Map 3*.)

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[1] Cominotto is inhabited. Filfla was used in the past by the British Navy for target practice.

2.29 Using *Map 3* it is possible to examine the Maltese coast in some detail. One method of approaching this task is to view the coast in segments, or coastal fronts, in relation to the general direction each segment faces. As is well known, the utility of examining coastal fronts in this manner was alluded to by the Court in both the *North Sea* cases and the *Tunisia/Libya* case[2].

2.30 On the main Island of Malta perhaps a half dozen coastal facets may be constructed in such a manner as to represent, with a good degree of accuracy, the overall coast. Thus, the segment of coast between Ras il-Qaws on the southwest and Delimara Point (if the highly convoluted inlet of Marsaxlokk Bay is ignored) in the southeast could well constitute one such facet. This has a length of about 21 kilometres and faces generally south-southwest. A second segment may be seen to run from Ras il-Qaws clockwise in a northerly direction to the vicinity of Ras il-Qammieh. Here there are several small indentations corresponding to local bays and inlets, but the overall facet or coastal front expressed as a straight line gives a good approximation of this stretch of coast. It is 10.2 kilometres long and faces almost due west toward the Italian Island of Linosa and Tunisia. From Ras il-Qammieh a shorter segment, approximately 5.4 kilometres long, may be drawn to Ahrax Point. This corresponds to the northwest coast of the Island of Malta since it faces in that direction and lies opposite the Island of Comino and the southeast coast of Gozo.

2.31 Ahrax Point is the northernmost point on the Island of Malta. As *Map 3* shows, from there the coast begins to double back on itself toward the east. Two quite deep indentations, Mellieha Bay and St. Pauls

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[1] It is easy to confuse the terms "large-scale" and "small-scale" when referring to maps since their meaning seems to contradict the plain meaning of the words. A "small-scale" map is, for example, a map on the scale of 1:10,000,000: the features appear very small since a greater expanse of the earth's surface is being illustrated within a smaller area. A relatively "large-scale" map would be on a scale of 1:100,000, for example, where the features would show up 100 times larger than on the "small-scale" map of 1:10,000,000.

[2] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 52, para. 98. *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 91, para. 131. The Court's Judgment in the *North Sea Continental Shelf Cases* is referred to in the text of this Memorial as the "1969 Judgment"; the cases themselves are collectively referred to as the "*North Sea* cases". The Judgment in the *Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* is referred to in this Memorial as the "1982 Judgment" and the case itself is referred to as the "*Tunisia/Libya* case".

Bay, are encountered almost immediately to the east of Ahrax Point. Otherwise, this northern coast falls gently away to the southeast, interrupted here and there by some lesser inlets and promontories.

2.32 In essence, this portion of the Maltese coast is aligned in a northwest/southeast direction all the way to Zongor Point on the northeast corner of the island. Needless to say, the Valletta Harbours carve deeply into the coast. But it really makes little difference for the present case whether the northern coast of Malta is divided at Valletta into two segments, or is seen to constitute one coastal front of some 23.6 kilometres all the way from Ahrax Point to Zongor Point. In fact, the whole segment faces generally northeast toward Sicily.

2.33 The final segment of coast to be considered is that lying approximately between Zongor Point and Delimara Point. Here the coast is also characterised by a number of small bays and indentations. Nonetheless, it appears accurate to say that this segment faces basically east, or perhaps just slightly south of east. The segment itself is very short if it is measured according to its general direction: only 5.4 kilometres in all.

2.34 As for the smaller Island of Gozo, its coast may be faithfully represented by four segments. Ras in-Newhela is the southernmost point on the island. Starting from this point and travelling in a clockwise direction, a first segment may be constructed between Ras in-Newhela and Ras il-Wardija. As *Map 3* shows, this is quite a short segment — no more than 7.3 kilometres long — which faces primarily south-southwest. From Ras il-Wardija the coast turns almost due north for a little over 4 kilometres until San Dimitri Point on the northwest corner of Gozo. The coast then veers abruptly back to the east and continues in this direction, even turning a little south of east, for virtually the entire northern coast of Gozo. There are one or two small bays that break up the continuity of this stretch, but by and large the whole coastal front, which is some 14.3 kilometres long, may be seen to face north-northeast toward Sicily.

2.35 Qala Point marks the end of Gozo's northward-facing coast. From here it works its way back to the southwest until it reaches Ras in-Newhela, the starting point for this description. This final segment is approximately the same length as the first, that is to say 7.2 kilometres. Unlike the first, however, it does not really abut on the open sea, but rather looks across toward the Island of Comino and the northwest coast of the Island of Malta.

2.36 Comino itself warrants only brief mention here. As *Map 3* reveals, it is wedged tightly between the Islands of Malta and Gozo and faces both of its larger neighbours from which it is separated by the North and South Comino Channels. The entire coast of the island is about 9 kilometres in circumference. Just off its west coast rests Cominotto, a tiny islet of less than one-tenth of a square kilometre in area. In fact, this final islet in the Maltese group is only slightly bigger than the uninhabited rock of Filfla which lies off the southern coast of Malta.

2.37 From this description of the Maltese coasts, it is apparent that on the Islands of Gozo and Malta the longest stretches of coast or coastal fronts face north or, more often, northeast. The longest individual coastal segment that may be constructed is along the northeast-facing coast of the Island of Malta; yet even this segment only measures some 23.6 kilometres. Very little of the Maltese coast actually faces due south, since what might be termed the "southern" coasts of the Islands of Malta and Gozo repeat the trend exhibited along the "northern" coasts — that is, from northwest to southeast, so that they face more in a southwesterly direction. This characteristic highlights Malta's distinct northwest/southeast axis or orientation. It is striking that this axis almost exactly parallels the direction taken by the Sicilian coast to the north and the series of troughs that constitute the Rift Zone[1] to the south.

2.38 Topographically, the Island of Malta displays a marked tilt to the northeast; the dominant relief trends are all toward the northeast. As a result most valleys drain in that direction, although there are no permanent surface rivers. It is in part this tilt, which shows up clearly on *Map 4*, that explains why the southwest coast is dominated by high cliffs and steep slopes whereas the northeast coastline is marked with deep inlets. It is here in the north that the fine natural harbours of Malta are found: St. Pauls Bay in the northwest along with Grand and Marsamxett Harbours on the northern coast facing Sicily. It is here also that the capital city of Valletta is located.

2.39 This northeast-facing coastline, though rocky, is gently inclined, facilitating both communications and access. As a result, the major economic coastal activity is restricted largely to the northeast and east coasts. Nevertheless, very few littoral stretches provide an opportunity for utilisation and very large areas of the coastlands are barren and rocky especially on the southern and western coasts of the Island of Malta. Gozo is almost entirely surrounded by perpendicular cliffs, those to the west and south being particularly high and attaining heights of up to 150 metres. There are along the entire coastline comparatively few inlets, and coastal economic activity is quite limited.

2.40 The geographic characteristics of the Maltese Islands have affected the pattern of human settlement and economic activity. Historically, up to the mid-19th Century most of the population lived by agriculture and, with the exception of the heavily fortified Valletta area, avoided settling on the coast. The old capitals of Malta and Gozo were in the centre of each island. Valletta, on the coast facing Sicily, was the only significant coastal settlement. The inland location of almost all towns and villages is a striking characteristic of Malta even today[1]. In short, Malta is at present, as it has been in the past, an "inland" community with just one large window to the sea — a window facing northward. Especially notable is the complete absence of any permanent settlement along the whole of the south- and west-facing coastline of the Island of Malta. Today on Gozo there are only three littoral settlements. Malta is in effect land-centered and not, as might have been expected, a nursery of sailors and fishermen dependent on the sea, comparable to Greece or parts of Spain and Italy.

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[1] See paras. 3.12 and 3.13 below.

2. Libya

2.41 The vast landmass of Libya covers a roughly rectangular area lying generally between the 19°N and 33°N parallels and the 9°30'E and 25°E meridians. The actual extent of Libya and its geographic relationship to the Central Mediterranean may be seen by reference to the map that has been attached as *Annex 9*. In size, therefore, Libya encompasses some 1,775,500 square kilometres. Its population according to the 1977 census is 2,939,200.

2.42 The geographic facts relating to Libya that are relevant to this case are readily apparent. In comparison with the map of Malta referred to above, a relatively small-scale map, such as *Map 5*, shows the Libyan coast to be uncomplicated. It would be pointless to examine the Libyan coast on the same scale as Malta, for to reduce the Libyan coast to six or seven or even 20 kilometre segments would be meaningless. Accordingly, it is not proposed to go into the same degree of detail regarding Libyan coastal geography as was necessary with Malta.

2.43 If there is any utility in thinking in terms of coastal segments for Libya, perhaps the following might be advanced as faithfully reflecting the actual coast. First, there could be deemed to be a section of coast that runs from the land frontier point between Libya and Tunisia at Ras Ajdir to the vicinity of Ras Tajura just east of Tripoli. Though Ras Tajura protrudes only slightly into the sea, it is the only promontory of any significance between Ras Ajdir and Ras Zarrouq where the Libyan coast falls away into the Gulf of Sirt. From Ras Ajdir to Ras Tajura is about 175 kilometres even along a straight line. From Ras Tajura, in turn, to Ras Zarrouq is slightly longer (about 180 kilometres). Thus, this section of the Libyan coast, which when measured taking account of all its minor indentations is some 403 kilometres long, can be viewed either as two facets of roughly 175-180 kilometres each or as one coastal front about 350 kilometres long. Either way, the coast as a whole faces northward.

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[1] Attention is drawn here to the map attached as *Annex 8* which depicts the pattern of settlements in Malta as taken from Landsat satellite imagery.

2.44 Of course, the Libyan coast does not end at Ras Zarrouq. As *Map 5* illustrates, it turns towards the south along the Gulf of Sirt for some 150 kilometres until approximately the 16°E meridian. From there the coast runs in a generally north-northwest/south-southeast direction to the vicinity of the 19°E meridian. This stretch of coast is roughly 310 kilometres long measured in a straight line. From this point the coast arcs northward to approximately Benghazi — a distance of about 280 kilometres. Finally, as the coast rounds the corner of Cyrenaica, it again assumes its general east/west direction and runs toward the frontier point between Libya and Egypt. Because this segment of the Libyan coast curves gently, it is difficult to divide it into separate coastal fronts. The overall distance of this segment, however, is greater than 600 kilometres and faces northward.

2.45 The question of scale may be appreciated in its proper perspective in considering this easternmost coast of Libya[1]. Just east of the 23°E meridian (visible on *Map 5*) the Libyan coast may be seen to recede rather sharply toward the south. The amount of this displacement is around 36 kilometres, a distance which is far greater than any of the coastal segments of the Islands of Malta or Gozo. And yet on the scale of *Map 5*, and set in the midst of an extensive Libyan coast that stretches for over 1,700 kilometres, this indentation is insignificant, and it would hardly warrant the drawing of a separate coastal front since a straight line from the northernmost point of this coast to the frontier point with Egypt adequately reflects this portion of the Libyan coast.

2.46 From the foregoing discussion it is evident that, in contrast to Malta, small islands with very limited coastlines however measured, Libya is a very large continental State with an extensive coastline. Its east/west extension along the Mediterranean is from approximately longitude 11° 33′ E to 25° E. Its north-facing coast is opposite Sicily, Malta, the Italian peninsula, and Greece, including the Island of Crete. In effect, the Libyan coast extends for virtually the entire breadth of the Central Mediterranean.

2.47 Historically, the territory of Libya has been considered as divided into three regions: Tripolitania, Cyrenaica and Fezzan. Northwestern Libya (Tripolitania) borders the Mediterranean along the Jeffara Plain and includes most of the population of Libya. Tripoli, the capital and the largest city of Libya, is located here. In northeast Libya (Cyrenaica) the second largest city, Benghazi, also is on the coast.

2.48 In contrast to those portions of the coasts of the Maltese Islands that might be considered to face south, the Libyan littoral is characterised by openness of relief with a stepped descent coastwards[1]. The coastal areas of Libya have been not only where most of its population has settled but also the centre of major currents of east/west trade from ancient times. An important pattern of north/south trade across the Sahara from Equatorial Africa has also been established since early times with the coastal area of Libya. This resulted from the fact that the routes northward to Libya were shorter and, generally speaking, physically easier to traverse, without such obstacles as the Atlas Mountains to cross. Not surprisingly, in light of this traditional orientation toward the sea, the fishing industry of Libya has been and continues to be locally important. The centrality of Libya in the Mediterranean and along the North African coast invited east/west movement of several kinds: pilgrimage, trading and political exchanges. Libyan contact with the sea along this lengthy coastline was an essential formative influence and led to north/south movement across the Mediterranean as well as to Libya performing a special function of projecting African trading and cultural contact northward toward Europe.

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[1] This area is taken merely to illustrate the particular point of the question of scale. It involves a part of the Libyan coast far outside any area conceivably relevant to this case.

3. Libya and Malta: A Broad Comparison

2.49 It does not appear that a more detailed geographical description of Libya would be pertinent at this stage of the pleadings. However, certain facts stand out when the geographic characteristics of Libya and Malta are compared. Libya is a large continental landmass with a very long coast fronting on virtually the entire length of the Central Mediterranean and even on portions of the Eastern Mediterranean. In contrast, Malta is a group of small islands with very short coastlines. The question of which coast of Malta bears a relationship with which coast of Libya for purposes of delimitation is a question necessarily encountered when such a small island or island group faces such a large continental landmass with such a long coast. This matter of coastal relationships will be dealt with in more detail in a later part of this Memorial[2].

2.50 A second important geographic fact is Malta's relative proximity to Sicily. Vis-à-vis Sicily, looking purely at coastal relationships, the southeasternmost coast of Sicily would appear not only to run in approximately the same direction as the northeast-facing coast of Malta but also for about the same distance.

2.51 A third major geographic fact is the relationship between States that face each other across the Mediterranean and between which are interspersed islands of many kinds. Such a situation implies, of course, a series of delimitations between facing continental States that would take into appropriate account the presence of islands, some of which have recently gained independence and others of which still retain the status of island dependencies.

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[1] The topography of Libya may be seen by reference to the map attached as *Annex 10*. This map is taken from the *National Atlas of the Socialist People's Libyan Arab Jamahiriya*, Secretariat of Planning, Surveying Department, Tripoli, 1978, pp. 43-44.

[2] See generally Part III, Chapters 9 and 10 of this Memorial.

CHAPTER 3

THE GEOMORPHOLOGICAL AND GEOLOGICAL SETTING

Introduction

3.01 In the previous Chapter the geographic elements of this case were discussed, including the configuration of the coasts of Libya and Malta. This Chapter will consider geomorphology and geology in detail, with the major emphasis placed on the present-day characteristics of the areas of continental shelf lying between Libya and Malta, that is, of the present-day sea-bed and subsoil of the submarine areas that constitute the natural prolongation of the land territory of each of the Parties[1]. In so doing, Libya has attempted to reflect the views expressed by the Court in its 1982 Judgment regarding the use of geomorphology and geology in the delimitation of the continental shelf[2]. However, since this is not the place for a legal analysis of these findings of the Court or of the general jurisprudence on this matter (such an analysis appearing in Chapter 6 of this Memorial), only the facts themselves will be examined here.

3.02 Geological factors will be introduced to the extent they bear upon the present-day characteristics of the sea-bed and subsoil[3] and help in evaluating the scientific and legal significance of the features discussed. In addition, certain specific aspects of the geology of Malta and Libya themselves, as distinguished from the submarine areas of continental shelf, will be touched on because they relate to and supplement the geographic material presented in the previous Chapter. As in the case of the previous

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[1] See para. 3.06 below where the findings of the Court in the 1982 Judgment regarding the geomorphology of the sea-bed underlying the Pelagian Sea are summarised.

[2] To quote in part from paragraph 61 of the Judgment:

> "The function of the Court is to make use of geology only so far as required for the application of international law. It is of the view that what must be taken into account in the delimitation of shelf areas are the physical circumstances as they are today; that just as it is the geographical configuration of the present-day coasts, so also it is the present-day sea-bed, which must be considered. It is the outcome, not the evolution in the long-distant past, which is of importance." *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 54, para. 61.

[3] The concept of the continental shelf includes the subsoil (what geologists would call the "subsurface") as well as the sea-bed. Although a precise definition of the subsoil may not be a useful exercise at this time, two points are worth making. First, petroleum geologists are concerned with areas of the subsoil that may be as deep as 7 or 8 kilometres below the earth's surface or the seafloor. Information regarding the subsoil at these depths is essential to the discovery of oil and gas. Second, although the various layers of the subsoil are given names such as "Upper Cretaceous" and "Triassic" — terms which fix the geological age of the strata involved — it is not the past but the present that is important in considering these strata. For these layers of the earth are present in the subsoil today and have a current significance. It is directly relevant to an examination of the continental shelf to probe beneath the surface and to analyse the importance of sea-bed features in terms, for example, of the depth of fault planes causing these features and the presence and location of volcanism. (See fn. 1 to p. 31 below.)

Chapter where no strict separation between geography and geomorphology was maintained, so also in this Chapter the related factors of geomorphology and geology will be combined[1].

3.03 Finally, by way of introduction, it should be noted that the names given to the various features discussed here are in most cases those found on the International Bathymetric Chart of the Mediterranean, Sheet 8 (hereinafter referred to as the "IBCM"), prepared by the Intergovernmental Oceanographic Commission under the aegis of UNESCO, which has been used as one of the basic sources of bathymetric data used in this Memorial and in the studies of the *Technical Annex*[2]. For ease of reference, ⑪ a somewhat reduced copy of the IBCM may be found in the pocket section of Volume III of this Memorial[3]. One purpose of this international mapping effort, completed in 1981 but not readily obtainable until 1982, was to harmonise the use of names. In some cases, the names of various geomorphological features on the IBCM differ from those commonly used in the past or used by Libya or by the Court in the *Tunisia/Libya* case. Where necessary to avoid confusion, some of these name changes will be noted in the text. Where names used in this Memorial differ from those used by the IBCM, that fact will also be noted.

3.04 It is the intention of Libya to put before the Court scientific facts that have been confirmed by leading experts in the field. To the extent there are known to be genuine differences of opinion among experts on certain technical points, they will be brought to the Court's attention.

A. The General Setting

3.05 The previous Chapter discussed the location of this dispute in the Central Mediterranean, an area differing quite significantly in geomorphology and geology from either the Western or Eastern Mediterranean. ② In this connection, it is useful to refer to *Map 6* and to focus particularly on the large shelf area lying in the western part of the Central Mediterranean[4].

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[1] The data on which the scientific material of this Chapter is based include certain scientific papers and illustrative figures prepared or approved by experts in the field, which are to be found in the *Technical Annex* at the end of this Vol. I of the Memorial. Published scientific studies have been drawn upon and will be cited, where appropriate, in the text of the Memorial or in the papers in the *Technical Annex*.

[2] See *Technical Annex*, Part I, for a full description and discussion of the IBCM. The IBCM is not the sole source of bathymetric data used by Libya in this Memorial, and other bathymetric charts may be introduced or referred to from time to time.

[3] A more substantially reduced version appears as *Map 2* facing p. 16.

[4] For the convenience of the Court, the names of features discussed in the ensuing paragraphs ② have been placed on *Map 6*, which illustrates the general geomorphological setting.

② 3.06 As *Map 6* reveals, the continuity of this area of shelf is interrupted by a zone of troughs and channels that stretches from roughly the area between Cape Bon and Sicily, again in a northwest/southeast direction. This zone then turns more east/west through an area south of the Islands of Gozo and Malta, to the Heron Valley linking up with the Medina (Malta) Ridge. To the south of this zone (as far east as the line of escarpments, which will be discussed below) lies the Pelagian Block, an area that was relevant to the delimitation in the *Tunisia/Libya* case. This area was described in general terms by the Court in that case as follows:

> "The character of the sea-bed of the area within which a delimitation has to be effected has been the subject of very abundant examination by the Parties, and of detailed scientific studies by their experts during the written and oral proceedings. At the outset it will be sufficient to note that this sea-bed area is part of a broader submarine region, i.e., the submerged portion of a geomorphological entity referred to by the Parties as the Pelagian Block (or Pelagian Basin), underlying the sea area known as the Pelagian Sea. It is agreed by the Parties that this entity also includes land areas within their territories, notably eastern Tunisia south of the Gulf of Hammamet, and the plain of the Jeffara in south-eastern Tunisia and northern Libya. Without entering into the question of the correct geological classification of any feature, the Court notes that this broader submarine region is inclined at a gentle slope from west to east; it extends on the north at least as far as a series of large depressions (the Troughs of Pantelleria, Malta and Linosa), and on the east as far as a change in slope of the sea-bed discussed in argument under the names of the 'Malta-Misratah Escarpment' or the 'Ionian Flexure' (approximately 15° east)[1]."

3.07 In this Memorial, Libya refers to the area, thus described by the Court, as the "Pelagian Block" and identifies the features mentioned by the Court as forming its northern and eastern boundaries[2].

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 41, para. 32.

[2] Attention is directed to the comments in the papers in Parts I and II of the *Technical Annex* as to the definition of the "Pelagian Block" and to the question whether the rift zone along these Troughs and on to the east divides the shelf area into separate geomorphological and geological areas of continental shelf or even constitutes an incipient micro-plate boundary in formation. For example, Figure 3 appearing in a paper of MORELLI, C.; GANTAR, G.; AND PISANI, M., "Bathymetry, Gravity and Magnetism in the Strait of Sicily and in the Ionian Sea", in *Bolletino di Geofisica Teorica ed Applicata*, Vol. 17, No. 65, 1975, pp. 39-58 at p. 52, and adapted by these authors from a figure in a paper of P.F. Burollet (1967), shows a "Ragusa Shelf" on which Malta is located, separated by the "Pantelleria Trough", to the south of which is a different area called the "Pelagian Shelf". Of further interest is the manner in which this figure of Professor Burollet shows the flexures and faults which limit the "Pelagian Shelf" to the east. (A copy of this figure has been attached as *Annex 11*.)

3.08 To the north of the troughs and channels are three features noted in the previous Chapter — the Adventure Bank, the Gela Basin and the Ragusa-Malta Plateau[1] — which visibly form the submarine extension of the Island of Sicily. It is on the easternmost of these features, the Ragusa-Malta Plateau, that the Maltese Islands are situated.

3.09 The Ragusa-Malta Plateau is, in turn, bounded on the east by a sharp morphological break which corresponds to the Sicily-Malta Escarpment[2]. This feature, with relief of more than three kilometres, stands out conspicuously on all bathymetric maps since it is one of the steepest and highest standing continuous slopes in the Mediterranean. The Pelagian Block is similarly bounded on the east by an escarpment — the Medina Escarpment — to the east of which is the Sirt Rise, a sea-bed area that projects from the Libyan coast in the region of the Gulf of Sirt and descends gradually toward the Ionian Abyssal Plain.

3.10 In speaking of these features, it is important to keep in mind a distinction that must be drawn between them and the limits of the "African Plate". For example, the words "block" or "shelf" used here as geomorphological terms do not have the same meaning as the word "plate" in the context of the term "African Plate". The latter is a geological term relating to the theory of plate tectonics. In the *Tunisia/Libya* case, Libya described the northern boundary of the African Plate as crossing a part of Sicily, which means that the southern portion of Sicily and the Ragusa-Malta Plateau, including the Maltese Islands, are part of the African Plate[3]. Libya believes this description to be widely accepted and reiterates it here, although in this Memorial there is very little further discussion of plate tectonics as such beyond the brief reference made to the subject in the paper appearing in Part II of the *Technical Annex*.

3.11 The point is simply this: the Pelagian Block and the African Plate are quite different kinds of physical entities and are not coextensive. The first is geomorphological; the second is geological and involves consideration of the entire lithosphere of the earth. Just as the African Plate does not terminate in the north at the geomorphological boundary of the Pelagian Block, so also on the east the African Plate is not bounded by the

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[1] It is noted here that the IBCM calls this feature the "Malta Plateau"; however, "Ragusa-Malta Plateau" is also widely used, and is more descriptive of the morphological link between Malta and the Ragusa area of Sicily (see, for example, the use of "Ragusa-Malta Plateau" by Professor Finetti in Part III, *Technical Annex*).

[2] The geomorphological term "escarpment" is used throughout this Memorial to refer to a long, more or less continuous cliff or relatively steep slope facing in one general direction, breaking the general continuity of the sea-bed by separating two level or gently-sloping surfaces. An escarpment may be produced by erosion or by faulting, but the escarpments of interest here are the result of faulting. The term is derived from the French word "escarpement" which means a steep face or slope.

[3] See *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 50, para. 52.

Sicily-Malta or Medina Escarpments[1]. Thus the Pelagian Block does not reach as far north as the Maltese Islands, which are located on a quite different geomorphological entity, the Ragusa-Malta Plateau[2]. However, Malta like Libya is a part of the geological entity known as the African Plate.

B. The Rift Zone[3]

3.12 It is now appropriate to describe the features which constitute the northern boundary of the Pelagian Block and which separate in the physical sense the natural prolongation of the Libyan landmass northward from the natural prolongation of Malta southward. The various features that will be discussed here combine to make up a rift zone (hereinafter referred to as the "Rift Zone") — a feature of major importance to this case — that stretches roughly from 10° 30′ E to 16° E. However, before dealing with the Rift Zone itself, which will require some discussion of geology, the various features comprising the Rift Zone will be examined as to their more visible physical characteristics, that is, geomorphologically.

3.13 The French geologist, Winnock, in describing the Pantelleria, Malta and Linosa Troughs as part of what he calls the "Sicilian Channel", suggests that they are clearly defined by the 500-metre isobath and extend from Cap Bon to the south of Malta for a length of 350 kilometres and a width of 100 kilometres. He indicates that this area of Troughs is separated from the Caltanisseta-Gela Basin in the north "by the Adventure Bank-Madrepore Bank-Malta Bank alignment". On the south he indicates that the limits of the "Sicilian Channel" lie along the "Tunisian Plateau[4]".

3.14 Examining each Trough in turn, the first starts at the Island of Pantelleria, which gives it its name — Pantelleria Trough — and runs southeast. Its pertinent dimensions are: maximum depth — 1,314 metres; width (at the 1,000 metre isobath) — 15 nautical miles; and length (at the 1,000 metre isobath) — 52 nautical miles. A second trough, the

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[1] Similarly, the "plate" is not necessarily coextensive with the physical continental shelf. In the Atlantic, for example, plates bound each other along the mid-Atlantic Ridge in the middle of the ocean far beyond the physical continental shelf.

[2] It is useful to refer again to the figure adapted from a technical paper of Professor BUROLLET, and attached as ***Annex 11***, in which two separate shelves are portrayed. See fn. 2 to p. 27. In addition, at fn. 3 to p. 43 a technical paper is referred to in which the authors (DEWEY *et al.* (1973)) take the position that a micro-plate boundary has been created along this geomorphological boundary of the Pelagian Block.

[3] Definitions of many of the technical terms used in this Section may be found in the footnotes to pages 30 through 33. The terms ***rift, rifting, rift valley*** and ***rift zone*** may be understood through the definition of ***rift***: a geomorphological term describing a narrow cleft, fissure or other opening in rock, made by cracking or splitting. See also para. 3.20 below.

[4] WINNOCK, E., *op. cit.*, pp. 445 and 453 (attached as ***Annex 7***). As the Rift Zone continues eastward from the "Tunisian Plateau", its southern limits lie to the north of the 35°N parallel (see Part II, ***Technical Annex***).

Malta Trough, starts to the northeast of the Pantelleria Trough and trends in the same southeasterly direction. It extends across to the south of Gozo and gradually shoals south of the Island of Malta to continue as the Malta Channel - Medina Channel eastward to the Heron Valley until it links up with the Medina (Malta) Ridge. This can be seen on both *Map 2* and ② *Map 6*. The Malta Trough is longer, thinner and, in parts, deeper than the other Troughs. Its measurements are: maximum depth — 1,714 metres; width (at the 1,000 metre isobath) — 11 nautical miles; length (at the 1,000 metre isobath) — 87 nautical miles and, at the 600 metre isobath, 108 nautical miles. To the southwest of the Malta Trough and running parallel to it is a third trough, the Linosa Trough, which trends in the same northwest/southeast direction. It is named for the volcanic Island of Linosa to its southwest. The statistics relating to the Linosa Trough are: depth — 1,615 metres; width (at the 1,000 metre isobath) — 8 nautical miles; length (at the 1,000 metre isobath) — 41 nautical miles.

3.15 An examination of the Slope Map (found in the pocket section of Volume III and discussed in Part I of the *Technical Annex*) as well as the Sea-Bed Model[1], a photograph of which appears here, indicates that these Troughs, aside from their considerable depth in comparison with the surrounding sea-bed, have steeply inclined flanks with slopes frequently of the order of 1:10 and sometimes 1:5[2]. A reduced copy of the Slope Map appears as *Figure 1* following the photograph of the Sea-Bed Model. The Troughs are bordered by shallow areas. As Part III of the *Technical Annex* explains, from this it may be concluded that these Troughs are the manifestation on the sea-bed of *grabens*[3] and that the high areas near the flanks are *horsts*[4]. Thus, for example, the Maltese Islands are a *horst* thrown up to the northeast of the Malta Graben as part of the rifting process that produced the downdropped *graben*. The geomorphological expression of these Troughs only partially portrays the depth of the *grabens* themselves for these *grabens* and the faults associated with them extend far down into the subsoil. These *grabens* have been partially filled with thick recent sediments. Thus, the offset in relief between *graben* and *horst* is greater in the subsurface than in the present-day seafloor. The maximum sedimentation is found in the deepest sections of the Troughs.

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[1] This Model, prepared by the Lamont-Doherty Geological Observatory of Columbia University, was furnished to the Court with this Memorial. See Part IV of the *Technical Annex* for an explanation of the way in which the Model was prepared and the depths indicated by the different colours.

[2] These figures mean that the depth of the sea-bed increases by an average of one metre for every five to ten metres of distance.

[3] A *graben* is an elongated, relatively depressed crustal unit or block that is bounded by faults on its long sides. It is a structural form that may or may not be geomorphologically expressed as a *rift valley* (see fn. 3 to p. 29). As the figures in Part III of the *Technical Annex* indicate, *grabens* are geological features that may relate to faulting in the subsoil many kilometres below the seafloor. Unless otherwise indicated, the definitions of geomorphological and geological terms used in this Memorial are derived from the *Glossary of Geology*, edited by BATES, Robert L. and JACKSON, Julia A., Falls Church, Virginia, American Geological Institute, 1980.

[4] A *horst* is an elongated, relatively uplifted crustal unit or block that is bounded by faults on its long sides. It is a structural form and may or may not be expressed geomorphologically.

3.16 Of particular geological significance is the presence of young volcanism[1] along these Troughs. For instance, the Islands of Pantelleria and Linosa are emerged volcanoes lying to the south of the Pantelleria and Linosa Troughs, respectively. Several volcanic mounts, which may be seen on the IBCM, mark the southern edge of the Malta Trough. The three mounts that are most distinctly visible are (i) at the northwestern end of the Malta Trough separating it from the Pantelleria Trough (indicated ⑪ on the IBCM by the 230 metre depth mark); (ii) at its southeastern extension due south of the Island of Malta (indicated by the 258 metre depth mark); and (iii) bordering the Malta Channel (indicated by the 113 metre depth mark)[2]. Further east, as the Rift Zone continues on to the Heron Valley, it connects up with the Medina (Malta) Ridge where magnetic anomalies also indicate volcanism. As the technical note in Part II of the *Technical Annex* reveals, the linkage of young volcanism with the Rift Zone demonstrates that the fault planes are deeply rooted and that the Rift Zone represents a currently active, fundamental fracture of the earth's crust. The deep rooting of the fault planes is demonstrated by volcanism because the *magma* (or molten rock) which rises to the earth's surface through these faults is formed at great depths in the crust and mantle.

3.17 Of the three Troughs that form the Rift Zone in its western sector, the Malta Trough extends furthest to the southeast. It crosses to the south of the Island of Gozo gradually shoaling south of the Island of ⑪ Malta to become the Malta-Medina Channel, visible on the IBCM. In the western portion of the Rift Zone, its geomorphological expression is seen in the Troughs; in the eastern portion, it is expressed geomorphologically by the Malta and Medina Channels.

3.18 Having examined the Troughs, the discussion now turns to the Channels that form the eastern part of the Rift Zone. The Malta and Medina Channels each fall below the 500 metre isobath. They serve to connect the Trough system on the northwest with the Ionian seafloor on the east[3]. Geologically, the Troughs and Channels represent a single Rift Zone of substantial proportions which continues on to the east separating the Sicily-Malta and the Medina Escarpments in the area of the Heron Valley. The Rift Zone is a geological feature whose significance is reflected geomorphologically and whose effects are deforming the sea-bed and subsoil[1].

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[1] *Volcanism* refers to the processes by which *magma* (molten rock) and its associated gases rise into the crust and are extruded onto the earth's surface and into the atmosphere.

[2] The volcanic mount of 113 metres lies between the Malta and Medina Channels at approximately 35°30'N; 15°E on the IBCM.

[3] In para. 2.10 above, the important oceanographic function performed by these Channels and the Troughs was discussed.

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3.19 If the Slope Map found in the pocket section of Volume III (as well as the Sea-Bed Model) is again examined in the area southwest of the Islands of Gozo and Malta, the relatively steep escarpment at the edge of the Ragusa-Malta Platform where the sea-bed descends southwestward into the Malta Trough-Malta Channel is clearly seen. The line of this escarpment parallels the northwest/southeast axis of Malta and continues almost completely across the southward-facing coasts of Malta. Further to the southeast, the northern shoal of the Medina Bank is seen to fall sharply into the Medina Channel between roughly 15° and 16°E. In a number of other areas the flanks of these Channels are steep[2].

3.20 Although the Malta and Medina Channels are well-defined by steep flanks — particularly in the areas southwest of Gozo and the Island of Malta and north of the Medina Bank — the fact that they show less relief than the Troughs is explained by several factors. One reason relates to the fact that the general area where the Channels are found may have been elevated in connection with the processes that created the Sicily-Malta Escarpment to the east and, hence, is now a shallower area of the seafloor[3]. Another reason, confirmed in the note appearing as Part II of the *Technical Annex*, is that rift zones[4] do not typically show the same sea-floor relief throughout their full extent. However, the major reason for the difference in the relief between the Troughs and the Channels in the Rift Zone here goes to the very nature of the Rift Zone itself. What has been called in this Memorial the "Rift Zone" for reasons of simplicity is a zone which involves movements more complex than the pulling apart of the subsurface of the earth. The movements along the Rift Zone also involve shearing and wrenching and what are known as "strike/slip" motions. As *Figure 2* rather simply illustrates, in some parts of the Rift Zone a pull-apart movement creates a feature expressed geomorphologically by a feature like the Malta Trough. Further to the east, however, the rifting movement is more one of lateral shearing rather than pull-apart, so that the resulting geomorphological features appear somewhat less pronounced -- like the Malta Channel — rather than as a deep trough. As stated in Part II of the *Technical Annex*: "... the Malta-

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[1] See Parts II and III, *Technical Annex*.

[2] See para. 3.34 below and fn. 1 to p. 38 below where the flanks of these Channels are described in greater detail in comparing them to the so-called "valleys" in the southern part of the Pelagian Block.

[3] See Part III of the *Technical Annex*.

[4] In fn. 3 to p. 29 above, the term "rift" is defined.

Medina Channel area reflect[s] faulting of an importance as great as in the area of the Troughs: the vertical displacement is merely far less due to the nature of this type of faulting.[1]"

C. The Eastern Boundary Along the Escarpments-Fault Zone[2]

3.21 The other geomorphological element of prime importance to this case, and which requires a detailed analysis at this point, is the Escarpments-Fault Zone, which in fact is composed of three features. As noted above, this Zone forms the eastern boundary of the Ragusa-Malta Plateau in the north and of the Pelagian Block in the south. The feature on the north is an escarpment running from approximately the 37°30′N parallel just off the east-facing coast of Sicily south-southeastward to the Heron Valley. It is known as the Sicily-Malta Escarpment. A second escarpment runs from here southwest along the eastern edge of the Medina Bank (and, hence, of the Pelagian Block), down to the Melita Valley (approximately the 33°30′N parallel) and is known as the Medina Escarpment. From the Melita Valley south, the continuation of the southern escarpment no longer forms a marked morphological feature but is known because of its subsoil faulting as the Medina-Misratah Fault Zone. It runs roughly toward Misratah on the Libyan coast. On the sea-bed this southernmost feature is best described as a declivity rather than as an escarpment[3].

⑪ ② 3.22 The IBCM, the Slope Map and the Sea-Bed Model, as well as *Maps 2* and *6*, all reveal these features forming the Escarpments-Fault Zone on the east with great clarity and show this Zone to be of major geomorphological importance at least as far south as approximately the 33°30′N parallel. The Sicily-Malta Escarpment, in fact, comprises one of the steepest, most pronounced features in the entire Mediterranean Sea. To traverse it on foot would involve virtually a feat of mountain climbing.

3.23 Although the steepness of these Escarpments and the depths to which the seafloor drops abruptly are apparent from the maps, figures and model, it may be useful to give the relevant statistics here:

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[1] See Part II of the *Technical Annex*, p. II-9.

[2] See fn. 2 to p. 28 above for a definition of the geomorphological term "escarpment".

[3] In para. 3.06 above, the findings of the Court in the *Tunisia/Libya* case regarding the eastern limits of the Pelagian Block contained in para. 32 of the Judgment are quoted. The feature forming the eastern boundary of the Block is called there the "Malta-Misratah Escarpment", the name used by Libya in its pleadings in that case, and the "Ionian Flexure", the name given to this group of features by Tunisia.

SICILY-MALTA ESCARPMENT

Maximum vertical drop: 3,200 metres
Length: Approximately 120-130 nautical miles
Inclination of slope: 1:4 - 1:10

MEDINA ESCARPMENT

Maximum vertical drop: 1,200 metres
Length: Approximately 87 nautical miles
Inclination of slope: 1:7.7 - 1:12

Despite the fact that the Escarpments-Fault Zone has been discussed here in segments, it is interesting again to refer back to the figure in *Annex 11* (adapted from a figure of Professor Burollet) in which the feature is shown as one single fault or flexure running all the way from Messina to Misratah.

3.24 To the east of the Sicily-Malta Escarpment lies the Ionian Sea with its Abyssal Plain. To the east of the Medina Escarpment and Medina-Misratah Fault Zone is the Sirt Rise where the sea bottom is deeper than the sea-bed of the Pelagian Sea and, in the north, considerably more complex. This area to the east underlying the Ionian Sea is geologically and geomorphologically different from the sea-bed and subsoil of the Pelagian Sea, a fact that emphasises that the Escarpments and Fault Zone constitute the physical boundary between the Ragusa-Malta Plateau and the Pelagian Block on the west and the Ionian seafloor on the east. Of course, the Libyan coast continues eastward far beyond Ras Zarrouq, where this physical boundary roughly ends. The Sirt Basin-Sirt Rise area of the Ionian Sea, which lies in front of that portion of the Libyan coast east of Ras Zarrouq, is the physical extension of the Libyan landmass in that region of the Central Mediterranean[1]. As explained in Chapter 9 below, this area does not fall for delimitation between Libya and Malta.

D. The Sea-bed and Subsoil of the Pelagian Block from Libya Seaward

3.25 The starting point of the description and analysis of the sea-bed and subsoil of the Pelagian Block is the Libyan coast, for it is from the coast that the continental shelf in the physical as well as the legal sense is seen to extend. The part of the Libyan coast bordering the Pelagian Sea runs from Ras Ajdir on the west to approximately Ras Zarrouq on the east. The physical appurtenance of the areas of shelf lying off this coast to the Libyan landmass was thoroughly documented by Libya in the *Tunisia/Libya* case[1]. As the Court observed in its Judgment in that case, both Libya and Tunisia derive continental shelf title in the area of the Pelagian Block from a natural prolongation common to both land territories[2].

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[1] See, for example, FINETTI, I., "Structure, Stratigraphy and Evolution of the Central Mediterranean", 1982, *Bolletino di Geofisica Teorica ed Applicata*, 1982, Vol. 34.

3.26 The area of the Pelagian Block which the Court deemed relevant in the *Tunisia/Libya* case extended as far east as the line of longitude of Ras Tajura and as far north as the parallel of Ras Kaboudia. A very detailed study of this area was made by both Parties to that case and presented to the Court in their written and oral pleadings. The Court, after examination of the evidence, concluded that there were no geomorphological submarine features that were relevant to determine the division between the natural prolongations of those two States[3]. In the words of the Court: "... the physical structure of the sea-bed of the Pelagian Block as the natural prolongation common to both Parties does not contain any element which interrupts the continuity of the continental shelf ...[4]". The Court then went on to find that there were no geomorphological configurations of the sea-bed that would even constitute a factor to be taken into account in achieving an equitable delimitation[5].

3.27 Without here going further into a legal analysis of these findings of the Court, the important point for present purposes is this: at least as far east as the longitude of Ras Tajura, and at least as far north as the latitude of Ras Kaboudia (the area deemed relevant to the delimitation in the *Tunisia/Libya* case), the Court has established the absence of any sea-bed features either relevant to determining the division between the natural prolongations of the two States concerned, or constituting relevant circumstances to be taken into account in effecting a delimitation. So the question now to be considered is whether that situation continues to pertain as the sea-bed is examined eastward and northward over the Pelagian Block outside the area considered relevant in that case.

3.28 From the Libyan coast the shelf descends very gently towards the north[6]. The gentleness of the slope of this shelf from the shore can be seen from the figures set forth in Section 3.B of Part I of the *Technical Annex*.

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[1] See, for example, the *Counter-Memorial (Technical Annexes Nos. 5A; 5B, 11, 12A* and *12B)* and the *Reply (Technical Annexes Nos. 4, 5, 6* and *8)* filed by Libya in the *Tunisia/Libya* case.

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 58, para. 67.

[3] *Ibid.*, p. 57, para. 66.

[4] *Ibid.*, p. 58, para. 68.

[5] *Ibid.*, p. 64, para. 80.

[6] The ensuing description may be more fully understood if the various maps and figures included in this Memorial, including the *Technical Annex*, the Slope Map found in the pocket section of Vol. III, and the Sea-Bed Model furnished to the Court are examined along with the text. A much more detailed description of this area of sea-bed is found in Part I of the *Technical Annex*.

These figures indicate that the sea bottom slopes down in a northerly direction from the Libyan coast (at approximately the 14°30′E line of longitude, roughly opposite Malta) at a mean inclination of only 1:179[1] to the 100 metre isobath, 9.7 nautical miles from the Libyan coast. This means that for every 179 metres of distance from the shore, the depth of the sea-bed increases by only one metre on the average. Continuing out to the 200 metre isobath along the same line, the inclination is only slightly greater (a mean inclination of 1:83 or an angle of 0°41′). If the same measurements are taken along the 15°E line of longitude (approximately 10 kilometres west of Misratah) the mean gradient out to the 200 metre isobath (7.5 nautical miles from the coast) is 1:69, or less than one degree. These slopes are very gradual, as can be seen if they are compared with the slope of the Sicily-Malta Escarpment to the east of the Ragusa-Malta Plateau, where the inclination of slope averages a very much steeper 1:5 or 1:6, or with the slopes of the Troughs and Channels of the Rift Zone.

3.29 The area of the Pelagian Block north of the Libyan coast between Ras Ajdir and Ras Zarrouq, therefore, is a rather gently inclined depression. Topographically, in fact, this depression begins inland of the Libyan coast and includes the Libyan littoral north of the Gafsa-Jeffara fault system and the Jabal Nefusa (the Jeffara Plain). The depression, however, is not sharply defined. It has a broad, gently sloping surface devoid of marked morphological relief. On the north, it could be said to run approximately to the 34° parallel of latitude at which point the bathymetry begins to get somewhat shallower. On the east it ends at the Medina-Misratah Fault Zone.

3.30 Adding to its somewhat amorphous nature is the fact that this depression is known by various names. The Court, on the one hand, called the southern portion of this depression the "Tripolitanian Furrow" in the *Tunisia/Libya* case. The IBCM, on the other hand, has divided it up and given the divisions different names. Thus, on the south, one finds what is called the "Tripolitanian Valley". Further north is the "Jarrafa Trough", continued southeastwards as the "Misurata Valley". Just above the "Misurata Valley" on the IBCM chart is the smaller "Melita Valley". To their north are found the "Melita Banks" and the "Medina Bank".

3.31 Examining each of these features in turn, the "Tripolitanian Valley" is seen to start south of the Jarrafa Trough at about the junction of 34° N; 13°E and to descend gradually in a generally southeast direction to about 14°E, where it turns more in an east/west direction and runs to approximately 14° 30′E, well to the west of the longitude of Ras Zarrouq. To the northeast, the Jarrafa Trough appears to run from about 35° N; 12° E in a northwest-southeast direction to about the 14° E meridian, where it becomes the "Misurata Valley", a feature which runs southeastward to the Medina-Misratah Fault Zone. At about the 34°N latitude the Melita Banks begin. Further east and somewhat to the north lies the Medina Bank, also visible on *Map 2*. These rather more elevated areas, which in fact start further to the west with the Lampedusa Plateau[1], have been present there since the Cretaceous (approximately 100 million years ago). They are part of the zones of elevation and subsidence that were developed on the rim of the African continent parallel to the features of the African coast at that time but, as the description in Part I of the *Technical Annex* brings out, there is no topographically discernable dividing line between the depression to the south and the higher areas to the north. On the east, the depression continues as far as the Medina-Misratah Fault Zone where it merges into the Sirt Rise.

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[1] Expressed in terms of an angle, this represents an inclination of 0°10′.

3.32 As for the Jarrafa Trough, it is a shallow depression about 60 kilometres long and 15 kilometres wide. For the most part the Trough is between 300 and 450 metres deep. Inasmuch as the neighbouring areas of the Pelagian Block are only slightly shallower, it can be seen that the Jarrafa Trough itself is not readily distinguishable from its immediate surroundings. The present-day geomorphology of this feature is largely the result of erosional factors.

⑪ 3.33 The last division of the broad depression depicted on the IBCM chart, the "Melita Valley", is shown on the chart to run in a somewhat different direction from the other valleys. It trends roughly east-northeast/ south-southwest and extends along the southern edge of the Medina Escarpment. As the Slope Map illustrates, the Melita Valley is gently contoured.

3.34 From this discussion, it is evident that the gentle depression in the Pelagian Block situated north of the Libyan coast, however it may be divided on the bathymetric charts, does not contain any marked features which interrupt the essential continuity of the sea-bed. The sea-bed descends very gradually in a northerly direction from the Libyan coast. This makes it difficult to substantiate the subdivisions referred to above on the basis of bathymetry. As the Slope Map and Sea-Bed Model show, even if vertical exaggeration is employed[2], the sea-bed areas in this region are almost smooth. If one were to cross on foot a similar area of dry land, the "valleys" would not be discernable. In fact, these

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⑪ [1] The "Lampedusa Plateau" corresponds in general to the area labelled the "Tunisian Plateau" on the IBCM.

[2] See Part IV of the *Technical Annex* for an explanation of the use of vertical exaggeration.

"valleys" seem to have no visible flanks at all[1]. The gradualness of the descent from various points along the Libyan coast has been indicated in paragraph 3.28 above. It may also be noted that these offshore areas are inclined very slightly to the east as well. Thus, in the southern part of the Pelagian Sea, in the Gulf of Gabes, the sea-bed slopes eastward at the rate of between 1: 1,500 (an angle of 0° 02′ 17″) and 1:650 (an angle of 0° 05′18″)[2]. Off Misratah, the eastern declivity of the seafloor increases somewhat to a gradient of about 1: 157 (an angle of 0° 22′) and the depth of the water increases slightly to between 600 metres and 800 metres. Even here, however, the sea-bed can only be described as relatively flat and smooth[3].

3.35 To the north of this wide, flat depression lie the Melita and Medina Banks and the Lampedusa Plateau. To visualise these banks, reference is made to *Figure 3* facing this page. This figure is a small-scale contour map where the geomorphology has been shown by the use of colour rather than by hachure marks as were used for the Slope Map. It can be seen that the elevated area of the Pelagian Block to the north has no abrupt features and is hard to define with precision. The high representing the area surrounding the Melita Banks assumes a northwest/southeast direction. It connects up with the Lampedusa Plateau to the northwest and continues to the southeast to about 15°E. The parts called the Melita Banks are composed of two shoals less than 200 metres deep in the southeast corner of this elevated area.

3.36 A second, roughly square, area of elevation is found to the northeast of these shoals. It runs northward from about 34°N latitude to about 35°N. Its eastern limits are along the Medina Escarpment. To the north, it descends abruptly into the Medina Channel. This raised area is separated from the elevated area surrounding the Melita Banks by an indentation of the seafloor that has a depth of slightly more than 400 metres but less than 500 metres and trends in the same general direction as the Jarrafa Trough to its southwest — that is, northwest/southeast. The portion of this elevated area that is called the Medina Bank is defined on ⑪ the IBCM by the 200 metre isobath. It is roughly rectangular in shape and it trends northeast/southwest.

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[1] In contrast, it should be noted that to the north the Malta and Medina Channels can be easily seen. See, in this connection, para. 3.19 above. For example, the two "valleys" in the south are generally of a gradient of 1: 80-160 or less, and only in a few places 1: 40-80. The south flank of the Medina Channel, which forms the northern boundary to the Medina Bank, has a slope of 1: 10-20 and even in some places 1: 5-10. Similarly, the escarpment on the northern flank of the Malta Channel parallel to the axis of Gozo and the Island of Malta and to their southwest has a gradient of 1: 5-10. The foregoing can be seen by examining the Slope Map and the Sea-Bed Model.

[2] It is again noted that a gradient of 1:1,500 means in general terms that for every 1,500 metres of linear distance the depth of the sea-bed increases by one metre on the average.

[3] Again, a more detailed description of the sea-bed areas of the southern Pelagian Sea may be found in Part I of the *Technical Annex* which analyses the gradients involved not only from south to north along lines of longitude (14°30′E and 15°E), but also from west to east from the point of intersection of 13°23′E (the longitude of Ras Tajura) and 33°30′N to the Medina-Misratah Fault Zone.

3.37 From this description it is apparent that the Pelagian Block[1] is a geomorphological entity which, however it may be divided up cartographically into features such as the valleys, banks and troughs identified on the ⑪ IBCM map, is in fact an area the physical continuity of which is unbroken by any sea-bed features of any prominence. Whether the sea-bed is viewed from south to north or from west to east, its slope is gradual and its contours are gently undulating.

E. Malta's Geomorphological and Geological Links to Sicily

3.38 The tight geomorphological connection between the Maltese Islands and Sicily can be seen on any bathymetric chart[2]. It is well established that before the last (Flandrian) marine advance following the most recent glaciation (Würm[3]) — that is, between 16,000 and 5,000 years ago — the sea level was between 120 and 140 metres below its present level in this area of the Mediterranean. The British Admiralty charts show the sill depth[4] of the Ragusa-Malta Plateau as deeper than ⑪ 100 metres but less than 110 metres. The IBCM shows a sill depth of less than 100 metres. In the absence of any evidence showing subsequent emergence (and the data point, if anything, to submergence) there seems little doubt that the Maltese Islands were connected by land to Sicily during prehistoric and protohistoric times. Taking the 200 metre isobath as marking the general limits of the Ragusa-Malta Plateau to the south and west and the Sicily-Malta Escarpment as marking its limits on the east, the Plateau would cover a sea-bed area of approximately 14,000 square kilometres. The Maltese Islands themselves comprise 315 square kilometres.

3.39 In the geographical portion of this Memorial, the south coast of Sicily was examined together with the underwater extension of this coast toward the south and southwest. The seafloor off this coast of Sicily has three distinct parts. In the middle, a relatively narrow shallow area (14 to 15 kilometres wide) slopes generally southwest into the Gela Basin, which is the southern portion of the Sicilian Caltanissetta-Gela Basin. At each end of this Basin is an extensive plateau, connected by a series of smaller banks such as the Madrepore Bank. These features are aligned in a northwest-southeast direction and thus mark the northern limits of the Rift Zone[1]. In effect, this alignment separates the Caltanissetta-Gela Basin from the Rift Zone. The plateau lying to the northwest of the Basin is known as the Adventure Bank. It represents a submarine promontory of the southwest coast of Sicily, and is separated by the Strait of Sicily from Cape Bon in Tunisia. To the east of the Gela Basin is the promontory known as the Ragusa-Malta Plateau, an extension of the southeast corner of the Sicilian "triangle". Together, these three features — the Gela Basin and the promontories of the Adventure Bank and Ragusa-Malta Plateau — constitute the geomorphological prolongation or extension of the Sicilian landmass, enlarging the Sicilian "triangle" substantially toward the southwest but preserving its general shape and northwest/southeast trend.

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[1] It is again noted (see paras. 3.06 and 3.07 above) that the Pelagian Block is identified in this Memorial as the area of shelf lying south of the Rift Zone and west of the Medina Escarpment and the Medina-Misratah Fault Zone.

② [2] See *Map 2* facing p. 16 and *Map 6* facing p. 26, for example, as well as the Sea-Bed Model.

[3] *Würm* is a lake in Germany. It is used as a term by geologists to refer to the fourth glacial stage of the Pleistocene Epoch in the Alps.

[4] A *sill* (sometimes called a "saddle") is a marine geological term meaning a submarine ridge or rise at a relatively shallow depth, separating a partly closed basin from another or from an adjacent sea; *e.g.*, in the Strait of Gibraltar.

3.40 The Ragusa-Malta Plateau projects southward about 65 nautical miles from the southeastern end of Sicily and is between 35 and 50 nautical miles wide from east to west. The Plateau extends east to the Sicily-Malta Escarpment where it ends abruptly. The southwest side of the Plateau beyond the Islands of Malta and Gozo falls sharply into the Malta Trough. To the south, the Plateau ends at the Malta Channel[2] which is a geomorphological and geological continuation of the Malta Trough.

3.41 The present-day morphological link between Malta and Sicily is underscored by the geological kinship between them. The subsoil of the Islands of Malta and Gozo is part of the structurally high area which is known geologically as the Ragusa Platform and which, as a geomorphological entity, has been called here the Ragusa-Malta Plateau. The connection between Malta, the Ragusa Platform and southeast Sicily is well established through similar rock types and the comparable thickness of rock formations[3].

3.42 Structurally, Malta is a *horst* formed as a result of shearing and extensional movements along the Rift Zone which also caused the formation of the *graben* manifested geomorphologically as the Malta Trough. In geological terms, these events occurred relatively recently, as they began during the Middle to Upper Miocene period, with Malta emerging less than 10 million years ago[4].

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[1] See para. 3.13 above and *Map 6* facing p. 26.

[2] Many maps, such as the British Admiralty Charts, place the Malta Channel north of Malta.
⑪ However, the IBCM places it to the south and this seems clearly to accord with the geomorphology. It may be that placing the Malta Channel north of Malta better reflects the fact that the principal east/west shipping lanes are north of Malta on its European side.

[3] See Parts II and III of the *Technical Annex*.

[4] Parts II and III of the *Technical Annex* go into more detail on the geological history of Malta. See fns. 3 and 4 to p. 30 for definitions of these technical terms.

② 3.43 The fault trends on Malta itself are also important in this context. Referring to *Map 6* facing page 26, it is again noted that the direction of the axis of the Maltese Islands is distinctly northwest/southeast. This trend is also reflected by the southwest-facing coast of Sicily and by the Rift Zone. As noted in paragraphs 3.17 through 3.20 above, the trend continues toward the east where it controls the channels separating the Medina Bank and the Ragusa-Malta Plateau.

3.44 There is a major fault along the southeast coast of the Island of Malta, the Malak Fault, which trends northwest/southeast and has a relative vertical displacement of at least 240 metres. A similar fault lies about 18 nautical miles off the island's southern coast and strikes in the same direction. These observed faults thus follow the "grain" of the Strait of Sicily[1]. A secondary fault trend characterising the northern portion of the main Island of Malta as well as Gozo is illustrated by the Victoria Lines Fault. This feature is aligned east-northeast/west-southwest and has a relative vertical displacement ranging from 100 to 200 metres.

3.45 The fault structure of southeast Sicily also reflects these two basic fault trends, one parallel to the "grain" of the whole Strait of Sicily, the Rift Zone, the axis of the Maltese Islands and the southwest facing coast of Sicily; the other being roughly perpendicular and generally subordinate to it. This is further evidence of the close geological ties between Malta and southeast Sicily and underscores the importance of the geomorphological link mentioned above. Figure No. 7 in Part III of the *Technical Annex* also graphically demonstrates this Malta-Sicily link by showing the relatively unfaulted area between Malta and Ragusa in comparison to the very marked fault zone to the south of Malta along the Rift Zone.

Conclusions

3.46 Only a few concluding points need to be added to supplement the foregoing geomorphological and geological description of this area of the Central Mediterranean. Nothing further need be added at this stage about the features that form the eastern boundary of the Ragusa-Malta Plateau and the Pelagian Block, that is the Escarpments-Fault Zone, consisting of the Sicily-Malta Escarpment, the Medina Escarpment and the Medina-Misratah Fault Zone. The geomorphology of the escarpments speaks for itself. They constitute a major discontinuity in the seabed. Moreover, the findings of the Court cited above represent what

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[1] See para. 2.21 above.

Libya understands to be a non-controversial conclusion: these Escarpments and the Fault Zone mark the eastern limits of the Ragusa-Malta Plateau and the Pelagian Block[1]. To the east is a quite different geomorphological and geological region.

3.47 Regarding the sea-bed area of the Pelagian Block northward of the Libyan coast as far as the Rift Zone, the preceding paragraphs of this Chapter as well as Part I of the *Technical Annex* — well-illustrated by the ⑪ IBCM, the Slope Map and the Sea-Bed Model — have shown that this area as far east as the boundary of the Pelagian Block formed by the Escarpments-Fault Zone is devoid of physical features that could be regarded as significant or in any way approaching discontinuities of the sea-bed interrupting the natural prolongation of Libya northwards from its coast across this area of continental shelf. In fact the area south of the Rift Zone (the Pelagian Block) topographically includes the Jeffara Plain of Libya. Its close correlation with the Libyan landmass, morphologically and geologically has already been noted in paragraph 3.25 above[2].

3.48 As to the close geomorphological tie of Malta to Sicily from which it physically projects, poised as the Maltese Islands are on the southwest edge of the Ragusa-Malta Plateau, a look at any of the bathymetric maps and figures will suffice to make the point. In the previous section it has been shown that this geomorphological link is reinforced by the close geological connection between Malta, the Ragusa-Malta Plateau and Sicily.

3.49 With regard to the Rift Zone, certain summary points may be made involving its extent, its present-day effect, the relationship between its tectonic activity and present-day geomorphology, and a comparison between it and other features in the Pelagian Block. What is said here in paragraphs 3.50 to 3.53 below is documented by the notes in the *Technical Annex* and related illustrative figures appearing either in the body of the Memorial or with the technical notes.

3.50 As to physical extent, the Rift Zone is apparent on the sea-bed and in the subsoil from the Strait of Sicily between the Adventure Bank and Cape Bon all the way southeast and east to the Heron Valley which divides the two escarpments. The Zone is no less significant along the Medina and Malta Channels than where the geomorphology reveals deeper troughs, as in the case of the Pantelleria, Malta and Linosa Troughs. Although this Rift Zone can be discerned on the basis of present-day sea-bed morphology, an examination of the subsoil is conclusive. This shows clearly a Rift Zone of sizeable proportions, a part of which runs along the Malta and Medina Channels south of Malta. Scientific data confirm that it continues on to the east, north of the Medina Bank, to the Heron Valley, where the Rift Zone divides the two Escarpments and links up with the Medina (Malta) Ridge. The presence of young volcanism along this Zone, including a volcanic mount between the Malta and Medina Channels at approximately 35° 30'N; 15°E[1], is added confirmation of the continuity of the Rift Zone from the Troughs, with their volcanics, to the Medina (Malta) Ridge where young volcanism is also present[2].

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[1] See para. 3.07 above.

[2] See fn. 1 to p. 35.

3.51 The present-day aspect of the Rift Zone is the second conclusory point to discuss. The Rift Zone is still active tectonically. This is shown by the presence of volcanic rocks at shallow depths as well as by other factors that are discussed in the technical notes in the *Technical Annex*. Some scientists believe that a plate boundary is developing across the Rift Zone[3]. All agree that it is both active and of major structural significance and that it constitutes a fundamental discontinuity of the sea-bed and subsoil.

3.52 From this it may be concluded that the present-day contours of the sea bottom — along the Troughs and along the Channels that geomorphologically reveal the Rift Zone — are the result of recent and current rifting activity. There is an important correlation between the subsoil rifting and the configuration of the sea-bed, thus pointing up the significance of the sea-bed features of the Rift Zone. The rifting along the Rift Zone is manifested all the way to the surface and the displacement is sizeable. In contrast, south of roughly the 35°N parallel, the faulting generally is no longer active and does not affect the contours of the sea-bed, which have been shaped by erosional factors. This area is now relatively quiescent. Thus the Rift Zone is young geologically and continues to stretch and shear the crust of the earth and deform the subsoil and sea-bed. To the south, on the Pelagian Block, the depression which geologically should be viewed as a sedimentary basin, is geologically old (the rifting having ceased nearly 100 million years ago). The geomorphology of the sea-bed there is now gently contoured as a result of other factors such as erosion. The old faults in this sedimentary basin have no direct bathymetric expression unlike the faulting in the Rift Zone which is offsetting[1] and affecting the subsurface formations as well as the surface of the sea-bed.

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[1] See para. 3.16 above.

[2] See para. 3.16 above and Parts II and III of the *Technical Annex* for a further discussion of the significance of volcanism.

[3] See Part II, para. 2.08 of the *Technical Annex*. See also DEWEY, J.F.; PITMAN, W.C.; RYAN, W.B.F.; BONNIN, J., "Plate Tectonics and the Evolution of the Alpine System," *Geol. Soc. Amer. Bull.*, Vol. 84, 1973, pp. 3137-3180 at p. 3139 in which appears a figure that suggests that a micro-plate, called the "Messina Plate", on which Malta and the Ragusa-Malta Plateau are located, is in the process of formation. (A copy of this figure is attached as *Annex 12*.) The view that a micro-plate boundary may be developing along the Rift Zone is reinforced by the conclusions of Professor Finetti, set forth in his summary technical note in Part III of the *Technical Annex*.

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[1] The term "offset" refers to the horizontal or vertical component of displacement. In the Rift Zone, the magnitude of offset of individual faults exceeds one kilometre.

CHAPTER 4

THE BACKGROUND OF THE DISPUTE

A. Legislative and Historical Background

4.01 The purpose of this Chapter of the Libyan Memorial is to examine the background, sources and development of the dispute between Libya and Malta concerning the delimitation of the continental shelf which is the subject matter of the present proceedings. The main topics with which this Section deals are legislation, the history of concessions granted by the Parties and diplomatic exchanges between them up to the date of conclusion of the Special Agreement. These topics are discussed under the headings given in the Table of Contents of the present Memorial.

4.02 The discussion in this Chapter has been kept as short as possible: but documentation has been included in the Annexes which may go beyond what is strictly required at the present stage. It is hoped that this will prove to be for the convenience of the Court and of both Parties.

1. Maritime Legislation of Malta

4.03 The Fish Industry Act, 1953, provided for the regulation of catching, landing and sale of fish[1]. The Act was enacted "by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Malta", which procedure indicates the degree of progress towards self-government achieved by Malta at that time. The definition of "Malta" in Section 2 of the Act is worthy of note: it reads " 'Malta' means the Island of Malta and its Dependencies". By Section 4, a "foreign fishing boat" (meaning one not registered in Malta — Section 2) was prohibited from fishing or attempting to fish "while the boat is within the territorial waters of Malta". At the date of the Act, the territorial waters extended to three nautical miles. The powers of control of a Fishery Officer over foreign fishing boats were, by Section 10(1) of the Act, also restricted to "any foreign fishing boat when within territorial waters[2]".

4.04 On 5 March 1958, the Legislative Assembly of Malta passed the Petroleum (Production) Act, 1958[3] which vested in the Government of Malta the property in petroleum and natural gas "within these Islands". According to the definition in Section 2, "in this Act ... 'Malta' means the

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[1] A copy of the Fish Industry Act, 1953 is attached as *Annex 13*.

[2] But see *Annexes 17, 18, 19* and *20* and paras. 4.08-4.11 below.

[3] A copy of this Act is attached as *Annex 14(a)*.

Island of Malta and its Dependencies and the land underlying the sea waters adjoining the same"[1].

4.05 As noted above, Malta became independent in 1964. On 22 July 1966, the House of Representatives of Malta, acting under the new constitution, passed the Continental Shelf Act, 1966 "to make provision as to the exploration and exploitation of the continental shelf and for matters connected with those purposes[2]." By Section 2 of the Act, Malta was given the same meaning as in the Constitution of Malta[3].

4.06 By Section 3(1) of the 1966 Act, any rights exercisable by Malta with respect to the continental shelf and its natural resources were vested in the Government of Malta. By virtue of Section 3(2) and the Schedule to that Act, the definition of "the continental shelf" which appeared in the Petroleum (Production) Act, 1958, was deleted and the continental shelf was removed from the operation of the 1958 Act and, "in relation to ... petroleum", brought within the operation of the 1966 Act which apparently became the governing legislation with respect to the continental shelf[4]. Section 2 of the 1966 Act provided:

> " '[T]he continental shelf' means the sea bed and subsoil of the submarine areas adjacent to the coast of Malta but outside territorial waters, to a depth of two hundred meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; so however that where in relation to states of which the coast is opposite that of Malta it is necessary to determine the boundaries of the respective continental shelves, the boundary of the continental shelf shall be that determined by agreement between Malta and such other state or states or, in the absence of agreement, the median line, namely a

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[1] The other definitions in Section 2 and the provisions of the Act with respect to "the searching and boring for and getting of petroleum and natural gas" will be mentioned as necessary below. The Petroleum (Production) (Amendment) Act of 1965 amended the definition of Malta that appeared in Section 2 of the 1958 Act to read: " 'Malta' means the Island of Malta, the Island of Gozo, the other islands of the Maltese Archipelago, the land underlying territorial waters and the continental shelf." It also provided a definition of the continental shelf as follows: " 'the continental shelf' means that part of the seabed and subsoil of the submarine areas adjacent to the coast of Malta but outside territorial waters over which Malta is entitled by international law to exercise sovereign rights for the purpose of exploring it and exploiting its natural resources". (A copy of this Amendment is attached as *Annex 14(b)*.)

[2] A copy of this Act is attached as *Annex 15*.

[3] This definition was: "Malta means the Island of Malta, the Island of Gozo, and other islands of the Maltese Archipelago including the territorial waters thereof."

[4] By Section 3(2) of the 1966 Act, in that section, "petroleum" has the same meaning as in the Petroleum (Production) Act, 1958, *i.e.*, " 'Petroleum' means all natural hydrocarbons liquid or gaseous including crude oil, natural gas, asphalt, ozokerite and cognate substances and natural gasoline."

> line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial waters of Malta and of such other state or states is measured;
>
> " 'Malta' has the same meaning as is assigned to it by section 126 of the Constitution of Malta;
>
> " 'natural resources' means the mineral and other non-living resources of the sea bed and subsoil as well as the living organisms belonging to sedentary species."

It will be necessary later in the present Memorial to compare this definition with the provisions of the 1958 Geneva Convention on the Continental Shelf, but similarities and differences cannot escape attention even in this statement of facts[1]. An obvious and basic distortion of the text of Article 6 of that Convention is the sole reliance on equidistance and omission of any reference to "special circumstances"[2].

4.07 By the Petroleum (Production) Regulations, 1969, the Petroleum Regulations 1958 were revoked and replaced[3]. The 1969 Regulations provided for production and exploration licences and included, in the First Schedule, a form of application for a production licence or an exploration licence; in the Second Schedule, model clauses for production licences; and, in the Third Schedule, model clauses for exploration licences. The text of the 1969 Regulations (without the Schedules) is attached as *Annex 16* hereto. The application of these regulations will be mentioned as necessary in Section (B) below. In particular, reference will be made to the Prime Minister's Notice (L.N. 41 of 1973)[4] issued for purposes of Regulation 4 of the Petroleum (Production) Regulations, 1969. In that Notice, the Prime Minister of Malta invited applications for Production Licences in respect of sixteen blocks offshore south of Malta, described in the Schedule to the Notice, and gave a summary of the basic considerations which the Prime Minister had decided to require in respect of licences granted in response to applications.

4.08 By the Territorial Waters and Contiguous Zone Act, 1971, the territorial waters of Malta were extended from 3 to 6 nautical miles "measured from low-water mark on the method of straight baselines joining appropriate points [5]" (see section 3 (1): but, by section 3 (2) of that Act, for the purpose of laws relating to fishing, the territorial waters of Malta were extended to 12 nautical miles "from the baselines from which the breadth of the territorial waters is measured". Section 4 declared a contiguous zone extending 12 nautical miles from the same baselines mentioned just above.

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[1] For a more detailed analysis of these differences, see paras. 9.29 through 9.38 below.

[2] It should be noted here that Libya is not a party to the 1958 Geneva Convention on the Continental Shelf and does not consider that Article 6(1) of that Convention expresses a rule of customary international law binding on it.

[3] See Regulation 9 of the 1969 Regulations, a copy of which is attached as *Annex 16*.

[4] See *Annex 42*.

[5] To date, Libya has not been able to determine precisely what these "appropriate points" are inasmuch as they do not appear to be specified in any Maltese legislation or regulation. (A copy of this Act is attached as *Annex 17*.)

4.09 By the Territorial Waters and Contiguous Zone (Amendment) Act, 1975 the breadth of the fishery zone and the contiguous zone were extended to 20 nautical miles by amendment of Sections 3(2) and 4(2) of the 1971 Act[1]. In a letter dated 10 November 1975 from the Permanent Mission of Malta to the United Nations addressed to the Secretary-General, a request was made for the circulation of a copy of the 1975 Act to all States Members and Observers of the United Nations. That Act was said in the letter to concern "the extension of Malta's territorial waters to 20 nautical miles"[2].

4.10 In 1978, two years after the signature of the Special Agreement, the maritime limits of Malta were again altered by the Territorial Waters and Contiguous Zone (Amendment) Act, 1978[3]. Its effect was described in a letter dated 1 September 1978 from the Permanent Mission of Malta to the Secretary-General of the United Nations, for the information of States Members and Observers[4]. The letter said:

> "This amendment, which has to be read and construed as one with the Principal Act [see *Annex 17* hereto], has for its effect:
>
> (i) The extension of Malta's territorial waters to 12 nautical miles measured from low-water mark on the method of straight baselines joining appropriate points.
>
> (ii) The extension of the contiguous zone to 24 nautical miles from the baselines from which the breadth of the territorial [*sic*] waters is measured.
>
> (iii) The extension of the exclusive fishing zone to 25 nautical miles from the same baselines."

4.11 In 1981, the Territorial Waters and Contiguous Zone Act, 1971 was further amended for the purpose of conferring powers of regulation on the Prime Minister. This was achieved by the Territorial Waters and Contiguous Zone (Amendment) Act 1981 which inserted a new Section 5 into the principal Act [1]. Although the intention is not immediately apparent, it seems that the purpose was to give the Prime Minister the relevant powers not only in relation to Malta's territorial waters (*stricto sensu*) but also in relation to the "fishery zone" and the contiguous zone.

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[1] A copy of the 1975 Amendment is attached as *Annex 18(a)*.

[2] A copy of this letter is attached as *Annex 18(b)*.

[3] A copy of the 1978 Amendment is attached as *Annex 19(a)*.

[4] A copy of this letter is attached as *Annex 19(b)*.

2. Maritime Legislation of Libya

4.12 The people of what now forms the territory of Libya have traditionally looked seaward to the north across the Mediterranean Sea. Like other people living along the North African coast, they have been interested in fishing, especially sponge fishing, in the waters to the north without any particular regard for limits such as those of the territorial sea. There has long been a natural tendency to define the limits of jurisdiction by lateral boundaries running northward sometimes without precision as to the northern limits of jurisdiction whether of Tripolitania or Cyrenaica or, in modern times, of Libya. The history of legislative measures applicable to the territory illustrates this fact, which may have some bearing on delimitation as between Libya and States lying on the other side of the Mediterranean.

4.13 It is sufficient, for present purposes, to begin with measures taken by Italy starting in 1911, at the time of the Italian occupation of Tripolitania, and to indicate subsequent measures very briefly. Incidental to the occupation, the Italian Government declared a blockade on the Tripolitanian and Cyrenaican coast, bounded in the west by Ras Ajdir and in the east by Mersa Matruh. The Declaration was made with respect to the littoral between longitudes 11° 32′ and 27° 54′ east of Greenwich[2]. The clear indication was that the limit of the blockade seawards lay along the meridian, that is to say due north, but the northern limit was not specified.

4.14 By Italian Royal Decree of 4 February 1913, No. 85, a 12-mile customs zone was made applicable to Libyan waters[3]. This limit was not adopted for fishing purposes: but a Royal Decree of 27 March 1913, No. 312, promulgated a reserved or exclusive fishing zone off the coasts of Tripolitania and Cyrenaica. This was the principal legislation on the subject, but it was amended and supplemented by a number of Italian measures between 1913 and the date of independence in 1951. These measures are detailed and complicated and the text of the 1913 Royal Decree is given in *Annex 23*. The general picture created by that Decree and the other measures is of different zones for different fishery purposes, with the seaward limits not always being clearly defined.

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[1] A copy of the 1981 Amendment is attached as *Annex 20*.

[2] Italian Declaration of 29 September 1911 in *Rivista di Diritto Internazionale*, 1912, p. 557. A copy of this Declaration is attached as *Annex 21*. The amendment of 19 October 1911 seems to have no relevance here and has been omitted.

[3] A copy of the Decree is attached as *Annex 22*.

4.15 The position was somewhat clarified by the "Instructions for the Surveillance of Maritime Fishing in the Waters of Tripolitania and Cyrenaica", issued on 16 April 1919[1]. These Instructions drew a distinction between the limits of territorial waters intended as established at three marine miles from the coast and sponge colonies. This distinction is expressed as follows in paragraph 2 of the Instructions:

> "2. The limits of the territorial waters are to be intended as established at three marine miles from the coast. It is however an accepted principle that all sponge colonies fronting the coast and extending without interruption even beyond the three miles limit constitute territorial waters and therefore sponge and coral fishing on such sponge colonies, regardless of how far they extend from the coast, must be subjected to the concession of the proper permit."

The 1919 Instructions did not otherwise define the area or seaward extent of the "sponge colonies". Nevertheless, the judgment of the Zuara Court of 2 September 1913 gives some indication of the potential extent of the "sponge colonies" to seaward, *i.e.*, over 25 miles from the beach of Tripolitania in the area in question near the border with Tunisia. This implies that the authorities in Tripolitania were claiming fishing jurisdiction (albeit of a limited kind) at least 25 miles from the coast.

4.16 The extent of fishery jurisdiction claimed under the Italian regime appears from the Italian Instructions for the supervision of maritime fishing in the waters of Tripolitania, No. 5247 of 25 June 1931[2]. Attention is called to Article 3 paragraphs (1) and (2), which define the limits of the areas in which relevant legislation was to be applied by the Italian Navy. Paragraph 2, which asserted the establishment of a sea border line between Tripolitania and Tunisia "by an approximate north-north east bearing from Ras Adgir" is of no particular importance in the present context. It is, however, worth noting the distance seaward as defined in paragraph (1), which with the introductory passage of Article 3, reads as follows:

> "(art. 3) - To implement the rules and ascertain the related infractions the Authorities indicated in art. 2 work in unison with the Royal Navy, with the Revenue Office and with all other officers of the police force. Based on these provisions and on the gubernatorial instructions of April 16, 1919, which are replaced by these provisions, the Royal Navy ships that go on a cruise or that are sailing in the waters of the Colony must carry on direct surveillance of fishing operations, keeping in mind that:

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[1] A copy of these Instructions is attached as *Annex 24*.

[2] A copy of these Instructions is attached as *Annex 25*.

1) the validity of the fishing legislation extends to the very limit of the territorial waters, that is to say up to 6 miles from the coast, but it is understood that all the sponge algas that face the coast and that extend without solution of continuity even past the limits of the territorial waters, at whatever distance they might be from the coast, are considered as being included in the territorial waters."

4.17 For purposes other than fisheries, Italian measures adopted other tests for the exercise of jurisdiction to seaward from the Libyan coast. The indefinite extension seaward of the blockade by the Italian Declaration of 1911 has already been mentioned in paragraph 4.13 above[1]. An Italian Royal Decree, No. 85 of 4 February 1913, declared as part of the maritime customs zone, for the purposes of customs surveillance, the sea within twelve miles (22,224 metres) from the shore along the coast of Tripolitania and Cyrenaica[2]. A 12-mile zone was also used for customs purposes in the Royal Decree No. 402 of 18 March 1915[3]. A similar 12-mile zone was used for purposes of neutrality legislation in the Royal Decree No. 595 of 6 June 1940[4].

4.18 When Libya became independent on 24 December 1951, Italian legislative measures in force at the time continued in force subject to any measures subsequently enacted by the Government of Libya[5]. By Law No. 2 of 18 February 1959, the breadth of Libyan territorial waters was fixed at twelve nautical miles[6].

4.19 In 1959, Libya enacted a new law to govern fishing for sponge off the Libyan coast (Law No. 12 of 1959[7]). The Law permitted fishing for sponge only in specified areas (Article 1) and prohibited anyone from fishing for sponge without a licence for that purpose (Article 2). Article 5 restricted fishing in the areas specified to ships registered in Libya, although, foreign vessels might be licensed to fish in accordance with a treaty in which Libya, had entered. The Law did not specify the areas. As regards Tripolitania, this was done by Decision No. 1 of 1960 and Decision No. 1 of 1961[8]. These decisions specified the areas by meridians of longitude along the coast and did not define the distance seaward. This was left to depend on the existence of sponge beds off the coast. Some indication of possible extent seaward is given by Article 24 of the Law which prohibited fishing by certain methods using divers in depths of water exceeding 10, 35 or 60 metres — the last-mentioned applying to the method of Al-Scavendor. Thus the claim to exercise control seaward was not specifically determined but might extend beyond the 60-metre isobath.

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[1] See *Annex 21*.
[2] See para. 4.14 above and *Annex 22*.
[3] A copy of this Decree is attached as *Annex 26*.
[4] A copy of this Decree is attached as *Annex 27*.
[5] See Article 210 of the Libyan Constitution, a copy of which is attached as *Annex 28*.
[6] A copy of Law No. 2 of 1959 is attached as *Annex 29*.
[7] A copy of Law No. 12 of 1959 is attached as *Annex 30*.
[8] A copy of these Decisions is attached as *Annex 31*.

4.20 Important legislative measures were adopted by Libya in 1955 concerning the exploration for and exploitation of petroleum in Libya. On 21 April 1955, Libya issued Petroleum Law No. 25 of 1955 (the "Petroleum Law") which was published in Gazette No. 4 on 19 June 1955 and became effective on 19 July of that year[1]. In accordance with Article 24 of the Petroleum Law, Petroleum Regulation No. 1 thereunder (the "Petroleum Regulation") was promulgated on 16 June 1955 and published, ⑩ together with an official map of Libya entitled "Map No. 1", in Gazette No. 7 on 30 August 1955[2]. The Petroleum Regulation also came into force on 19 July 1955.

4.21 The Petroleum Law and the Petroleum Regulation provide the basis for the exploration and exploitation of all petroleum in Libya both on land and offshore. By Article 1 of the Petroleum Law, all petroleum in Libya in its natural state is the property of the Libyan State and no person shall explore or prospect for, mine or produce petroleum in any part of Libya unless authorised by a permit or concession issued under the Petroleum Law. For this purpose, Article 3 divides the territory of Libya into four petroleum Zones. Two of these, the First and Second, comprise the Mediterranean coast of Libya from the frontier with Tunisia to the frontier with Egypt. All four Zones are described in Article 2 of the Petroleum ⑩ Regulation and identified on Map No. 1 attached thereto. That map also indicates boundaries which were projected seaward from the frontier points. In the present case, the precise direction of the projection is not considered to be of direct relevance. On the other hand, significance does attach to the indefinite prolongations of these lines and the fact that no northern boundary of the Zones is indicated. It is clear that the claim of Libya does not terminate at the edge of the map which runs approximately along the parallel 34° North. The indefinite extent of the Libyan claim seawards also appears from the description of Zones 1 and 2 in Article 2 of the Petroleum Regulation which includes in the Zones areas of "high seas contiguous thereto under the control and jurisdiction of the United Kingdom of Libya[3]". It is apparent that, in 1955, these areas were regarded as extending beyond the arbitrary line formed by the northerly edge of the map but, at that time, Libya was not in a position to define the northern boundary of its "control and jurisdiction" because it recognised that boundaries had to be agreed with other States.

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[1] A copy of the Petroleum Law is attached as *Annex 32*.

[2] A copy of the Petroleum Regulation and of Map No. 1 is attached as *Annex 33*.

[3] It should be noted that on 1 Sep. 1969 Libya became the Libyan Arab Republic. On 2 March 1977 it was proclaimed the Socialist People's Libyan Arab Jamahiriya.

4.22 A similar conclusion may be drawn from Paragraph (1) of Article 4 of the Petroleum Law, which provides as follows:

> "This Law shall extend to the seabed and subsoil which lie beneath the territorial waters and the high seas contiguous thereto under the control and jurisdiction of Libya. Any such seabed and subsoil adjacent to any Zone shall for the purposes of this Law be deemed to be part of that Zone."

The reference to the "seabed and subsoil which lie beneath ... the high seas ... under the control and jurisdiction of Libya" is obviously a reference to the Libyan continental shelf — again without any attempt at definition of the northern boundary.

4.23 The Petroleum Law and the Petroleum Regulation (as amended[1]) thus provide the necessary legislative authority for the grant of concessions, or their equivalent, to explore for and exploit petroleum resources anywhere within Libya, including its continental shelf. It was in accordance with these measures that the Libyan "concessions" mentioned below were granted.

B. The Emergence of the Dispute (Diplomatic History and the Grant of Concessions)

4.24 In the present case, although the dispute came to a head as a result of conflicting petroleum concessions granted by the Parties, it emerged out of differences of view regarding the principles of international law which should govern the delimitation of the continental shelf between Malta and Libya. Malta has persistently adhered strictly to "the Median Line", *i.e.*, the "principle" of strict equidistance. Libya, on the other hand, has taken the view that, in the circumstances of the very small island group of Malta, and the large continental State of Libya with its extended coastline on the southern side of the Mediterranean, the "equidistance principle" is wholly inappropriate and inapplicable. From an early stage, Libya has taken the view that the solution should be fair and reasonable, taking fully into account the circumstances of the particular case.

4.25 The attitude of each of the Parties is shown by the legislative measures which it has taken, its position in negotiations and its actions to give effect to its petroleum policies in offshore areas. The relevant legislative measures of the Parties have been outlined in Section A above. It now remains to describe the negotiations and the action taken by the Parties. Since these two aspects of the history are closely related, the facts are given below as far as possible in chronological order. It is hoped that this method will provide a clear picture of the conduct of the Parties and the way in which the present dispute emerged.

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[1] There have been numerous amendments, but it has not been considered necessary to burden the Memorial with any of them. To avoid confusion, however, it may be noted that the "Petroleum Commission" and the "Chairman of the Commission" for which provision was made in Article 2 of the Petroleum Law were replaced by the "Ministry of Petroleum" and the "Minister of Petroleum" by Articles 2 and 7 of Law No. 6 of 16 July 1963. By decision of the General Secretary of the General People Congress No. 1 of 1979, the "Ministry of Petroleum" and the "Minister of Petroleum" were replaced by the "Secretariat of Oil" and the "Secretary of Oil" respectively.

4.26 As just indicated, the basic legislation of Libya is to be found in the Petroleum Law and the Petroleum Regulation [1]. These, together with ⑩ Map No. 1 attached to the Petroleum Regulation, show that Libya regarded the continental shelf as extending northward from its coast, without definition of the northern boundary of the continental shelf area appertaining to Libya. In 1958, Malta enacted the Petroleum (Production) Act, 1958, which, at that time, did not define the continental shelf, but rather referred only to the "sea waters adjoining [Malta][2]".

4.27 The views of the Government of Malta on delimitation of its continental shelf seem to have developed as follows. On 12 December 1964, Malta exchanged letters with the United Kingdom assuming all rights and obligations deriving from "valid international instruments" which had been made applicable to Malta prior to her independence. By a Note Verbale dated 5 May 1965, Malta informed Libya of the exchange of letters of 12 December 1964 and advised Libya that the 1958 Geneva Convention on the Continental Shelf was one of such instruments[3]. The Note said—

> "... in determining the boundary of the continental shelf appertaining to Malta, the Government of Malta has been guided by the provisions of Article 6(1) of the Convention, which establish the boundary as the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of Malta and of other countries adjacent to the same continental shelf are measured."

On 29 May 1966, Malta acceded to the 1958 Convention, and on 22 July, enacted the Continental Shelf Act, 1966[4]. This is the principal Maltese legislation governing exploration and exploitation of the continental shelf. As regards definition and delimitation, as noted in paragraph 4.06 above, it follows the main lines of the 1958 Convention but with the omission of any reference to "special circumstances".

4.28 The grant of offshore petroleum concessions by the Parties began on 30 April 1968 when the Libyan authorities granted Concession No. 137

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[1] See paras. 4.20 through 4.23 above.

[2] See paras. 4.04 and 4.07 above.

[3] A copy of this Note is attached as *Annex 34*. For convenience, this Convention is referred to in the text of this Memorial as the "1958 Convention".

[4] See paras. 4.05 and 4.06 above.

to Aquitaine and Exwarb. The area of this concession was reduced in
⑦ 1974 to the area shown in yellow on *Map 11* facing page 62. It is not, however, considered that Concession No. 137 has any direct bearing on the present dispute.

4.29 Maltese activities offshore began effectively in 1970 when the Government, acting in accordance with the Petroleum (Production) Regulations, 1969[1], offered for bidding two "blocks" lying on the north and
③ east side of Malta. These areas are shown on *Map 7* following this page. By the Continental Shelf (Designation of Area) Order, 1971[2], which came into effect on 22 April 1971, the area indicated on that map was designated as an area within which the rights mentioned in Section 3(1) of the Continental Shelf Act, 1966, were to be exercisable[3]. In 1971, three exclusive production licences were granted covering an area of some 5,600
③ square kilometres as also shown on *Map 7*. The licences for the areas marked (1), (2) and (3) on that map were granted respectively to the Shell/AGIP group, the Home Oil Company and Aquitaine. In 1972 and 1973, four wildcat wells were drilled in those areas. They were dry and the licences were relinquished in 1975 and 1976[4].

4.30 The history of negotiations between the Parties may be said to begin with a meeting of officials held in Malta at the Auberge de Castille in July 1972 when, in the context of problems arising from the acquisition of independence and the withdrawal of the British, Malta was looking for assistance in the field of trade and commerce. A copy of the minutes of the meeting held on 11 July 1972 is attached as *Annex 37(a)*. Also attached, as *Annex 37(b)*, is a copy of a memorandum received by the Libyan delegation during the discussions. Sub-heading (g) of the memorandum refers to the "Median Line". Under that heading, paragraph 36 says:

> "Malta has already obtained expert assistance and median lines have been drawn in accordance with Art. 6 of the UN Conference on the Law of the Sea, Convention on the Continental Shelf and Contiguous Zones of April 1958 (Art. 12) and the Convention on the Continental Shelf of the same month (Art. 6). This work may be of assistance to both the Libyan and Tunisian Governments. The Maltese Government suggests that discussions on the median line be held in Malta."

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[1] See para. 4.07 above and *Annex 16*.

[2] A copy of this Order is attached as *Annex 35*.

[3] Some of the facts regarding the Maltese concessions are based on a "Petroconsultants Report", the relevant maps of which have been attached as *Annex 36*. The organisation, Petroconsultants, with offices in Geneva, Switzerland, maintains an information service which makes this type of information available.

③ [4] The location of these wells may also be seen on *Map 7*.

From that time forward, Malta adhered to "the Median Line" and nothing but "the Median Line" as its proposed line of delimitation for the continental shelf with Libya.

4.31 As can be seen from page 3 of the minutes of the meeting, no progress was made at that time because the Libyan delegation stated that it was not possible to sign a bilateral agreement with Malta on "the Median Line". On the following day, 12 July, Malta submitted a draft agreement relating to the "delimitation of the continental shelf" between Malta and Libya[1]. According to Article 1 of that draft:

> "(1) The dividing line between the part of the Continental Shelf which appertains to Malta and that part which appertains to the Libyan Arab Republic shall be arcs of Great Circles between the following points, in the sequence given below:

1.	34° 27′ 0 N	13° 27′ 4 E
2.	34° 20′ 3 N	13° 54′ 3 E
3.	34° 17′ 2 N	14° 06′ 3 E
4.	34° 16′ 2 N	14° 16′ 2 E
5.	34° 14′ 0 N	14° 39′ 8 E
6.	34° 12′ 3 N	15° 02′ 5 E
7.	34° 11′ 0 N	15° 25′ 0 E
8.	34° 12′ 8 N	15° 43′ 0 E
9.	34° 14′ 8 N	16° 00′ 0 E
10.	34° 19′ 3 N	16° 37′ 5 N
11.	34° 23′ 5 N	17° 16′ 0 E
12.	34° 27′ 2 N	17° 46′ 2 E
13.	34° 48′ 0 N	18° 04′ 6 E

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[1] A copy of this draft is attached as *Annex 38*.

The positions of the points in this Article are defined by latitude and longitude on the basis of the Greenwich Meridian."

④ 4.32 *Map 8*, showing the line which would result from these coordinates, appears following this page. As appears from that map, the proposed line runs from 13° 27′ 4″ E to 18° 4′ 6″ E in a direction which is approximately east/west, almost parallel to the Libyan coast. The Maltese draft was discussed again on 13 July when the Libyan delegation challenged the appropriateness of Filfla as a "baseline" from which to determine "the Median Line" and reserved its position on the coordinates proposed by Malta. The Libyan delegation pointed out that they were not authorised to sign an agreement and that such an agreement would be subject to ratification. They stressed that it would take some time for Libyan technicians to examine large-scale maps and expressed the view that a further meeting might be held in the second half of September.

4.33 The substantive reply of Libya to the Maltese draft agreement came on 23 April 1973 when, at a meeting held in Malta, the Libyan delegation handed to the Maltese delegation a draft agreement[1]. The Libyan draft was similar to the Maltese draft in outline but differed in three important respects. First, the preamble was different, omitting any reference to the "Median Line" and expressing the wish of complying with the customary rules of international law; secondly, Article 1 gave a completely different set of coordinates for the proposed delimitation line; and, thirdly, Article 5 provided for the agreement to become effective on ratification. This draft agreement totally rejected the "Median Line" proposed by Malta and proposed a delimitation taking account of the differences in length of the Libyan and Maltese coasts.

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[1] A copy of the draft is attached as *Annex 39*.

4.34 Article 1 of the Libyan draft agreement reads as follows:

> "a) The dividing line between the parts of the continental shelf which appertains to the Libyan Arab Republic and that appertains to Malta shall be defined by the great circles joining the points which their Co-ordinates are given below:—

Point No:	**Latitude**	**Longitude**
1) I	35 40 0	13 49 5
2) II	35 35 6	13 55 5
3) III	35 33 8	14 00 5
4) IV	35 34 5	14 10 0
5) V	35 32 5	14 12 4
6) VI	35 25 5	14 17 8
7) VII	35 23 0	14 25 0
8) VIII	35 20 5	14 30 0
9) IX	35 25 5	14 39 5
10) X	35 23 5	14 46 0
11) XI	35 26 8	14 53 8
12) XII	35 32 8	14 53 5

> b) The dividing line has been drawn on the chart annexed to this agreement."

4.35 *Map 9*, showing the lines joining the Libyan coordinates, appears
⑤④ immediately following *Map 8*. By contrast with the Maltese line, it will be seen that the Libyan line extended from 13° 49′ 5″ E to 14° 53′ 5″ E. It was not considered that there should be any delimitation between Malta and Libya east of the last-mentioned meridian. The Libyan draft agreement was discussed at meetings in Valletta on 23 and 24 April 1973. There were no agreed minutes but a draft prepared by the Maltese delegation was provided to the Libyan delegation. A copy of that draft is attached as *Annex 40*. While the draft is not necessarily accepted as accurate in every detail, it does indicate the main points that were discussed. According to the draft minute, the Libyan delegation stated that, in determining the dividing line, the respective length of the portion of the coastline of Libya facing Malta had been taken into consideration; and that this portion of Libyan shoreline extended from the Tunisian border to east of Misurata. The distance between the two coastlines (Malta and Libya) was divided in the same proportion as the two shorelines bore to each other. The Libyan delegation stated that equidistance was not equitable and that it was not the only applicable method of delimitation. They pointed out (*inter alia*) that, as regards the delimitation between Malta and Sicily, both the Maltese and the Libyan method would give almost the same results because the portion of the coastline of the Island of Sicily was nearly equal to the length of the Maltese coast facing Sicily. The Libyan

delegation also commented that Article 6 of the 1958 Convention emphasised that continental shelf delimitation shall be determined by agreement and that, "in the absence of agreement and *unless another boundary is justified by special circumstances* the boundary is the median line[1] ". This made it very clear that equidistance was only one method to determine the dividing line and it is not obligatory on any State.

4.36 The Maltese delegation replied that the Libyan principles were new ones and that examples of islands like the Italian Islands of Linosa and Lampedusa were island dependencies whereas Malta was an island State and could claim the same breadth of maritime jurisdiction as coastal States situated on the mainland of a continent. The Maltese delegation also quoted other examples where equidistance had been used. The Maltese delegation was unable to accept the principles enunciated by the Libyan delegation and relied on the position stated and the draft agreement submitted in July 1972. They insisted that they could only usefully discuss the issue on that basis. The draft minute concluded: "The Maltese delegation further stated that the equidistance principle was founded on legal international practice. The Libyan side were not prepared to carry on the discussion on the basis of the equidistance principle." The main difference of view between the two sides was thus clearly established.

4.37 Apparently while the talks of 23 and 24 April 1973 were still in progress, Prime Minister Mintoff of Malta sent a written message to Colonel Ghadaffi dated 23 April 1973[2]. In that message, he said that the Libyan delegation sent "to discuss Median Line" had suggested as the underlying principle an "inequitable yardstick", which was completely unacceptable to the Government of Malta. The message thus rejected the Libyan proposal immediately, out-of-hand, and, it seems, without any material bilateral discussion. The message then went on to state Malta's intention in effect to put into operation the "Median Line" proposed by Malta, saying, " ... it is now impossible for us to evade the commitments we have made with international oil companies and tenders are being called for with a provisional Median Line identical with the one which was submitted to your Government over a year ago". In other words, the Government of Malta had committed itself to international oil companies and was intent on going ahead unilaterally on the basis of its own "Median Line".

4.38 Meanwhile, the Prime Minister of Malta issued a notice (L.N. 41 of 1973[3]) for the purposes of regulation 4 of the Petroleum (Production) Regulations, 1969, inviting applications for Production Licences in respect of the area "offshore South of Malta" consisting of sixteen blocks.

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[1] Italics added.

[2] A copy of this message is attached as *Annex 41*.

[3] The notice did not contain a date of issue. See *Annex 42*.

The blocks were defined by coordinates given in the Schedule to the ⑥ Notice. By reference to *Map 10*, the blocks, which are numbered 1 to 16, may be seen to adjoin the southern boundary of the blocks mentioned in paragraph 4.29 above. As regards the southern boundary of the sixteen new blocks, the Schedule to the Notice adds the following footnote:

> "The areas of Blocks 12, 13, 14, 15 and 16 are subject to alterations in the light of any agreement on the Median line between Malta and the Libyan Arab Republic."

4.39 The Government of Malta was determined to proceed with the grant and operation of concessions regardless of the entirely different view on the question of delimitation taken by Libya. A Libyan delegation which visited Malta in May 1973 found that the Maltese position was unchanged and was told that the deadline for the submission to the Maltese authorities of proposed offshore contracts was the beginning of August 1973. A further meeting between a Libyan and a Maltese delegation held in Malta on 3 July 1973 made no more progress. The Maltese delegation still maintained that the Libyan proposals were totally unacceptable; the Maltese proposals were equally unacceptable to Libya. The Maltese delegation rejected a Libyan proposal to meet again in Tripoli in August, saying that the talks could not be allowed to drag on indefinitely.

4.40 On 25 March 1974, Prime Minister Mintoff sent a further written message to Colonel Ghadaffi in which he referred to a meeting with Colonel Ghadaffi in Tripoli on 16 February 1974 and, while commenting on a number of matters, said "[s]imilar complications are arising with the definition of the median line", and he offered to send another Maltese delegation to Libya to discuss a number of matters apparently including the "definition of the median line"[1].

4.41 At this stage, Malta proposed referring the dispute over delimitation to arbitration and in April 1974 submitted a draft for that purpose. A copy of this draft is attached as *Annex 44*. At the present stage of these proceedings, the most significant provisions of the draft are contained in Article 1[2].

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[1] A copy of this message is attached as *Annex 43*.

[2] Article 1 reads as follows:

"Article 1

(1) The Tribunal is requested to decide the following Question:

> 'What is the dividing line between that part of the Continental Shelf which appertains to the Libyan Arab Republic and that part which appertains to Malta?'

(2) The Tribunal shall reach its conclusions in accordance with the rules and principles of international law.

(3) The Tribunal is not called upon to decide in the matter ex aequo et bono."

4.42 At a glance, it is obvious that paragraph 1 assumed the existence of a single continuous continental shelf between Libya and Malta and that Malta wished the Arbitration Tribunal to determine "the dividing line". Requiring that the Tribunal should arrive at results in accordance with the rules and principles of international law, the Tribunal was to be forbidden "to decide in the matter ex aequo et bono"[1].

4.43 According to information received from Petroconsultants[2], in 1974, "eight of the sixteen blocks offered in the Medina Bank area were granted over 7,471 sq. km[3]". A map showing the Maltese concessions ⑥ granted in 1974 appears as *Map 10*. A comparison with the location of the blocks offered by the Prime Minister's Notice L.N. 41 of 1973 shows that concessions over Blocks Nos. 2, 3, 4 and 9 were granted to Texaco, Nos. 10, 11, 14 to JOC Oil and No. 16 to Aquitaine *et al.* It is understood that the date of the grant to Texaco was 31 May 1974, to JOC Oil 1 November 1974, and to the Aquitaine Consortium 20 November 1974. However, Blocks 2, 3, 4 and 9 were made the subject of a Designation Order of 15 October 1974[4] made under Section 3 of the Continental Shelf Act, 1966. In any event, the upshot of grants and relinquishments was that, at the end of 1976, the Maltese offshore concessions were as shown on the Petroconsultants map showing the "Concession Situation as of 31 December 1976" which is attached in *Annex 36* to this Memorial.

4.44 A number of offshore concessions were also granted by Libya in 1974. These were NC 41, NC 47, NC 35A and NC 35B, NC 53 and NC 42. The areas of these concessions are shown on *Map 11* which follows ⑦ this page. *Map 11* also shows what remained of Concession No. 137[5]. The procedure followed in 1974 was for "concessions" to be granted by way of exploration and production sharing agreements (known as "EPSAs") between the National Oil Corporation of Libya and the respective oil companies[6]. Thus, Concession NC 53 was covered by a framework agreement between NOC and Total Libya of 14 April 1974, and the necessary exploration and production sharing agreement was signed on 13

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[1] See para. 4.47 below.

[2] A considerable part of the "facts" concerning Malta stated in this Section of the Memorial is based on information provided to Libya by Petroconsultants in the form of a "Chronological Review of Offshore Licences in Malta" covering the period 1958 to 1980. Therefore, these "facts" are subject to correction on the basis of any more authoritative information.

[3] See fn. 3 to p. 59 above and *Annex 42*.

[4] A copy of this Order is attached as *Annex 45*.

[5] See para. 4.28 above.

[6] This procedure originated in 1972 when Libya announced its policy to pursue negotiations for participation with its concessionaires on an individual basis. In the course of completing the generalisation of that policy, Law No. 66 of 1973 effected the nationalisation and transfer to the State of 51% of all properties owned by, *inter alia*, Esso Standard of Libya Inc., Texaco Oil Overseas Co. and California Asiatic Oil Co. Libya and Texaco failed to make agreement for Texaco's nationalised interest and Texaco ceased its oil activities in Libya from 1973 on.

READEX FICHE

October 1974. The framework agreement covering Concessions NC 35A and NC 35B was entered into by NOC and Esso Standard Libya on 16 April 1974, the exploration and production sharing agreement being signed on 29 September 1974.

4.45 The care of Libya to avoid as far as possible any conflict arising as a result of overlap with concessions granted by Malta is demonstrated by a letter signed on the same day (29 September 1974) as the Esso Agreement concerning NC 35A and NC35B[1]. That letter contained the following passage, which formed an integral part of the Agreement:

> "Until such time as there has been a demarcation of the offshore area subject to the jurisdiction of the Libyan Arab Republic from the offshore area subject to the jurisdiction of Malta, by mutual agreement between the two countries or by their mutual concurrence with a binding international convention, or by any other binding determination as shown by satisfactory documentary evidence, Second Party will not be obligated to commence Petroleum Operations either in those portions of the Offshore Contract Area or in those portions of the area subject to the deep water commitment specified in Article 14 of the Agreement which lie in waters north of latitude 34° 10′ 00″ North."

4.46 In granting the above-mentioned concessions, there was no attempt or intention on the part of Libya to define or limit the northern boundary of its area of continental shelf in the region: nor was there any element of implied agreement or acquiescence vis-à-vis Malta either in the boundaries of the concession areas or in the terms on which the concessions were granted.

4.47 Meanwhile, between 19 and 21 December 1974, ways of solving the delimitation problem were discussed between Prime Minister Mintoff and Colonel Ghadaffi. In particular, the proposal made by Malta in April was being studied by both sides and it was suggested that both countries should study the possibility of accepting delimitation in accordance with what might be established by the Third United Nations Conference on the Law of the Sea.

4.48 The grant of concessions by Malta and Libya, mentioned above, resulted in protests and reservations on both sides. The nature of these protests and reservations is some indication of the attitude of the Parties to continental shelf delimitation.

4.49 By a Note Verbale dated 30 June 1974 from the Libyan Ministry of Foreign Affairs to the Embassy of Malta in Tripoli, the Government of Libya recorded its reservation as regards the grant by the Government of Malta to the Texaco Oil Company of the right to prospect for oil in the area south of Malta[1]. This was a response to the grant to Texaco dated 31 May 1974 mentioned in paragraph 4.43 above. The Note of 30 June was followed by a further Note Verbale dated 14 July 1974 from the Libyan Ministry of Foreign Affairs to the Maltese Embassy in Tripoli[2]. That Note referred to an item published in the "Times of Malta" on 1 July 1974 containing a warning to ships and fishing boats to stay away from a ship which would be carrying out a seismic survey for the following two months at a distance 40 miles south of Malta between the latitudes 34° 26′ N and 35° 06′ N and the longitudes 14° 50′ E and 15° 32′ E[3]. The area covered by this seismic survey is shown on the map attached as *Annex 49*. The Note also referred to the Agreement signed by Malta with Texaco on 31 May 1974 and continued, saying that both the agreement and the survey fell within a part of the sea-bed undergoing negotiations between the two countries and requesting confirmation of the accuracy of the news. In a Note dated 17 July 1974 referring to its Note dated 30 June 1974, the Libyan Ministry of Foreign Affairs requested the Maltese Embassy to supply a chart showing the area in which prospecting for oil by Texaco was to take place[4].

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[1] A copy of this letter is attached as *Annex 46*.

4.50 The receipt of the Libyan Notes of 30 June and 17 July was acknowledged by a Note Verbale from the Embassy of Malta dated 18 July 1974[5], and receipt of the Libyan Note dated 14 July was acknowledged by a Maltese Note Verbale dated 25 July 1974[6]. A substantive response to the three Libyan Notes was given by a Note Verbale dated 8 August 1974 from the Embassy of Malta to the Libyan Ministry of Foreign Affairs[7]. It confirmed that a seismic vessel had been operating in the area mentioned in the Libyan Note of 14 July 1974. The Note claimed that the area in question fell within the continental shelf of Malta and stated: "It is also North of the equidistance line separating the submarine areas of Malta and Libya." Claiming that any activities relating to the exploration and exploitation of minerals and oils in that region were exclusively a matter for Malta's jurisdiction, the Note declined to accept the reservation made by the Government of Libya of 30 June 1974 with regard to the granting by the Government of Malta of the rights to Texaco Malta Inc. for oil exploration. The Note also enclosed a copy of Legal Notice 41 of 1973[1], together with "the relevant map".

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[1] A copy of this Note is attached as *Annex 47*. As noted in fn. 6 to p. 61, Texaco had ceased its oil activities in Libya from 1973.

[2] A copy of this Note is attached as *Annex 48*.

[3] This survey was carried out on behalf of Texaco Malta, Inc.

[4] A copy of this Note is attached as *Annex 50*.

[5] A copy of this Note is attached as *Annex 51*.

[6] A copy of this Note is attached as *Annex 52*.

[7] For the text of the Maltese response, see the copy of the Note attached as *Annex 53*.

4.51 Pursuant to exploration rights granted to Esso Standard Libya Inc., that company engaged the services of a company known as Seismograph Service (Marine) Ltd. to carry out seismic exploration in the ⑦ Libyan Concession areas NC 35A and NC 35B (see *Map 11*). Apparently, the intended activities of that Company came to the attention of the Maltese authorities as a result of a letter dated 13 November 1974 from the Company, requesting a wireless telegraphic licence for radio equipment at T.C. Smith, 12 St. Christopher Street, Valletta, Malta, in order to communicate with M.V. Petrol. Referring to that letter, the Maltese Ministry of Foreign and Commonwealth Affairs wrote a letter dated 26 November 1974 to Seismograph Service (Marine) Ltd[2]. The letter asked the Company to note that areas north of the coordinates set out in the letter constituted the continental shelf of Malta and requested a categoric assurance from the Company that no seismic lines had been shot in any part of the area indicated[3]; the coordinates set out were 34° 27′ N; 13° 27′ 4″ E to 34° 48′ N; 18° 04′ 6″ E: once more the "equidistance" line claimed by Malta. Esso Standard Libya Inc. informed the Libyan authorities of the letter from the Maltese Ministry of Foreign and Commonwealth Affairs.

4.52 It will be recalled that the Libyan concession contracts were concluded on 29 September and 13 October 1974[4]. On 8 June 1975 the Government of Libya addressed a letter in similar terms to each of the Maltese concession holders, *i.e.*, Aquitaine, Elf, Hispanoil and Wintershell, Texaco, Cities Service and J.O.C. Oil. A copy of the letter together with the coordinates defining the areas concerned with respect to each of the concession holders is attached as *Annex 55*. The concession areas mentioned were in fact Maltese Blocks Nos. 2, 3, 4, 9, 10, 11, 14 and 16 referred to in paragraph 4.43 above[5]. With respect to each Company, the Government of Libya stated in the letter that it had learnt that the Company was carrying out exploration activities aiming at the extraction of oil in offshore areas in the Mediterranean, the locations of which were as just indicated. The letter continued: "The said areas constitute a

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[1] See *Annex 42* and para. 4.38 above.

[2] A copy of this letter is attached as *Annex 54*.

[3] The process of "shooting" seismic lines involves the measurement of echo soundings that reflect off various geological strata below the earth's surface. Measurements are generally obtained by discharging either explosive or electronic charges from a vessel and measuring the "bounce back" time. The information thus received is useful for exploration of potential hydrocarbon reserves.

[4] See para. 4.44 above.

⑥ [5] See also *Map 10* facing p. 60.

Continental Shelf upon which the Libyan Arab Republic maintains full sovereignty". The letter also demanded a firm assurance from each Company that no such exploration or drilling activities were being carried out within the said areas. It concluded by saying: "Your performance of such activities without obtaining a prior permit or authority from the Libyan Arab Republic shall be considered an infringement upon its rights, thus justifying the adoption of any measures deemed necessary to safeguard our legitimate rights."

4.53 Libya thus clearly set on record its claim to the whole of the areas comprised in the blocks indicated, and gave warning that it would take the measures necessary to maintain its rights in those areas. Subsequently, Libya did nothing to resile from that position.

4.54 On 17 June 1975 the Government of Malta, acting through the Chairman of its Oil Committee, Mr. Abela, by a letter addressed to the Libyan concession holder, Total, countered by requesting an assurance that no exploration or drilling activities were being or would be carried out in any part of the area north of a median line which was defined by coordinates which were not, in fact, the same as those mentioned in paragraph 4.51 above[1]. The views of the Government of Malta were expressed in the following language: "This area constitutes a Continental Shelf upon which the Republic of Malta maintains full sovereign rights and any exploration or drilling activities therein without a licence issued to you by the Government of the Republic of Malta, constitutes an infringement of Malta's sovereignty, justifying the adoption of measures necessary to safeguard the legitimate rights of the Republic of Malta."

4.55 Total replied to the letters of 17 June and 17 July from Mr. Abela by a letter dated 31 July 1975[2]. Noting that the areas claimed by Malta and those of the Total concession from Libya (NC 53) might overlap, Total said: "The problem you raise depends therefore on the determination of the geographical limits of the exercise by the Republic of Malta and the Libyan Arab Republic of their sovereign rights over this plateau." Total also said that the correspondence with Mr. Abela was being transmitted to the Libyan NOC and to the Libyan authorities. This was in fact done later in August.

4.56 Mr. Abela, acting on behalf of Malta, replied to the letter of 31 July 1975 by a letter dated 13 August 1975[3]. In that letter he repeated the position of Malta expressed in his letter of 17 June and the need for "the adoption of measures necessary to safeguard the legitimate rights of the

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[1] According to this letter, the Maltese claimed equidistance line extended on the east only as far as the point 34°23'5"N; 17°14'E, in contrast to the eastern coordinates of 34° 48'N; 18°04' 06"E mentioned in para. 4.51. (A copy of this letter is attached as *Annex 56*.)

[2] A copy of this letter is attached as *Annex 57*.

[3] A copy of this letter is attached as *Annex 58*.

Republic of Malta". He also repeated the request for a "categoric assurance" of non-activity in the areas north of the "equidistance" line made in the letter of 17 June.

4.57 The reactions to the grant of concessions by Malta and Libya outlined above confirm that Malta was claiming against Libya the areas of continental shelf as far south as, but not beyond, the Maltese version of an equidistance line which stretched from the point, 34° 27′ N; 13° 27′ 4″ E on the west to the point, 34° 48′ N; 18° 04′ 6″ E on the east. Libya, on the other hand, was disputing the Maltese equidistance line as a basis for delimitation, and claiming areas even further north than the northern boundary of the Maltese concessions identified as Blocks 2 and 3[1].

C. Agreement on Recourse to the Court

4.58 At this point, it is convenient to resume the outline of the steps leading to signature of the Special Agreement. On 18 October 1975, there was a meeting between Major Jalloud, Prime Minister of Libya, and Prime Minister Mintoff. At that meeting, in response to a statement by Major Jalloud that Libya wanted the International Court of Justice as the means for the settlement of the dispute, Mr. Mintoff said that Malta did not object to the Court.

4.59 On 3 January 1976 there was a further meeting in Tripoli between Prime Minister Mintoff and a Libyan delegation presided over by State Minister Taha Sharif Ben-Amer at which the question of the phrasing of a submission to the Court was raised by Mr. Mintoff, and, on the suggestion of Mr. Taha Sharif Ben-Amer, this question was referred to legal experts who were to meet in Malta between 20 and 25 January 1976. At that stage, it was common ground that the problem of delimitation of the marine boundary should be submitted to the Court, and the question became one of settling an agreed text for that purpose. On 17 January 1976 the Libyan Ministry of Foreign Affairs transmitted to the Maltese Embassy in Tripoli a draft of a Special Agreement between Libya and Malta for the submission of the dispute to the Court[2]. The Agreement had a non-committal title and preamble, and the substance of the reference to the Court was set out briefly in Article I, which read as follows:

"ARTICLE (I)

The Court is requested to decide the following question:

> What principles and rules of International Law are applicable to the delimitation of the areas of the continental shelf and the economic zone which appertain to the Libyan Arab Republic and that [*sic*] of the Republic of Malta."

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⑥ [1] See *Map 10* facing p. 60 above.

[2] A copy of the draft Agreement is attached as ***Annex 59***.

4.60 At meetings between a Maltese and a Libyan delegation held in Malta from 3 to 9 February 1976, Malta submitted its proposed draft Special Agreement[1]. The preamble was considerably longer and more complicated than in the Libyan draft, and Article I of the draft read as follows:

"ARTICLE I

(1) The Court is requested—

(a) To decide what, according to the applicable principles and rules of international law, is the dividing line separating, as between the Parties, the Continental Shelf areas lying between Malta and Libya;

(b) To delimit the said dividing line and cause such part of it as stretches in the West-East direction from the [14th to the 18th] degrees of longitude East of Greenwich, to be marked out on a chart or charts of scale not less than [1:1,100,000 at lat. 39°N], to be attached to and form an integral part of the final decision of the Court.

(2) The choice of the [14th to the 18th] degrees of longitude East of Greenwich is without prejudice to the rights of the Parties beyond those points in conformity with the decision of the Court."

4.61 Both the Libyan and the Maltese draft Agreements were discussed during the February meetings in Malta, and differences between the positions of the two sides were examined in detail. Some of the differences between the two drafts may be noted here.

4.62 While the Libyan draft had a short and purely formal preamble, the Maltese draft had a substantial preamble which touched on a number of material points. It appeared to assume that the areas of sea-bed and subsoil of the Mediterranean Sea between Libya and Malta formed a single continental shelf — an assumption not acceptable to Libya. On the other hand, it recognised that in the discussions and negotiations it had become "evident that there was a distinct difference of views on the rules and principles to be applied in establishing boundaries", and stressed the good relations between the two Parties.

4.63 The most important differences were in the request to the Court in Article I of each draft. The Libyan draft included the exclusive economic zone as well as the continental shelf: the Maltese draft did not. The Libyan draft requested the Court to indicate the rules and principles of international law to be applied in the delimitation: the Maltese draft requested the Court "to decide what ... is the dividing line". This proved to be the main outstanding difference which could not be settled between the two delegations. There were, however, further provisions in sub-paragraph (b) and paragraph (2) of the Maltese draft. Their intent was to request the Court to delineate this part of the dividing line which "stretches in the West-East direction from the [14th to the 18th] degrees of longitude East of Greenwich". It is hardly surprising that these paragraphs did not appear in the final text of the Special Agreement.

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[1] A copy of the draft Agreement is attached as *Annex 60*.

4.64 Another difference, less obvious but of some importance, was the implicit reference to the Third United Nations Conference on the Law of the Sea at the end of Article III of the Libyan draft. The Maltese delegation objected firmly to this reference and it also was omitted from the final text.

4.65 There were also differences concerning the written pleadings. The Maltese draft (Article II) provided for exchange of Memorials and Counter-Memorials within short periods: the Libyan draft (Article III) provided for consecutive pleadings with longer periods, Malta filing its Memorial first. The text that emerged in the Special Agreement (Article II) was a compromise.

4.66 Finally, the Libyan draft (Article IV) provided for negotiations for the purpose of concluding an agreement in accordance with the decision of the Court: the Maltese draft (Article III) would merely have required the Parties to "proclaim the Continental Shelf boundary between their two countries in conformity with that decision". These two drafts were clearly related to the different approaches of the two sides concerning the request to be submitted to the Court, as expressed in Article I of each draft[1]. When Article I was redrafted the Maltese draft Article III could not stand, and it was natural that a text on the lines of the Libyan draft Article IV should be adopted, as it was in Article III of the final Special Agreement.

4.67 Following the meetings held in Malta in February 1976, progress was made on the draft Special Agreement until the point was reached where the main outstanding difference was that Malta wished to ask the Court to delineate the dividing line in a precise manner, whereas Libya wanted to ask the Court to prescribe the principles to be employed in delimiting the dividing line between the two countries. This difference was resolved at a meeting between Prime Minister Mintoff and Colonel Ghadaffi held in Tripoli on 15 April 1976. On that occasion, Mr. Mintoff suggested a solution to the deadlock by rephrasing the controversial provision to make it read that the Court is requested to show the Parties how to solve the problem of the dividing line between the two countries. Colonel Ghadaffi agreed to this suggestion provided that representatives of both sides should meet to write the final draft of the Agreement. This was done and the Agreement was duly signed subject to ratification on 23 April 1976.

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[1] See para. 4.63 above.

4.68 There continued to be a number of contacts between various representatives of the two Parties following the signature of the Special Agreement. In many instances these concerned wider relations between Libya and Malta unrelated to the continental shelf. On occasions, however, the question of the continental shelf arose in the context of these exchanges. While in Libya's view these events are of marginal relevance to the question of delimitation, certain of them deserve brief mention here since, when viewed as a whole, they indicate a continuity in the positions of both Libya and Malta as those positions had become crystallised at the time the Special Agreement was signed. As such, they contribute to an understanding of the background against which the delimitation is set.

4.69 By a Note dated 5 October 1976, the Maltese Embassy in Tripoli officially informed the Libyan Ministry of Foreign Affairs that Malta had ratified the Special Agreement[1]. The procedures for ratification of international agreements required the Libyan Ministry of Foreign Affairs to refer the Special Agreement to the Council of Ministers for consideration. Final responsibility for ratifying the Special Agreement at that time, however, rested with the Revolutionary Command Council.

4.70 It was in these circumstances that Mr. Mintoff, on 3 December 1976, addressed a letter to Colonel Ghadaffi. The text of the entire letter may be found in *Annex 62*. What deserves mention, however, is a proposal that appeared in the letter. For the Maltese Prime Minister stated:

> "... I am ready to interpret your silence following receipt of this letter as implying your approval that Libya, as a friendly gesture towards Malta, will let Malta drill in the area up to the Median Line that is exactly equidistant between our countries.
>
> Therefore, if by the first day of the new year, we will not receive a reply other than an acknowledgement of our letter, I will assume that this is indeed your wish[2]."

4.71 Libya's Prime Minister, Major Jalloud, responded by letter dated 15 December 1976 addressed to Prime Minister Mintoff[3]. In his letter Major Jalloud suggested that no "hasty unilateral decision" be taken by either side. He went on to indicate that the appropriate experts in Libya had been instructed to give priority to the continental shelf matter and to the Special Agreement itself.

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[1] A copy of this Note is attached as *Annex 61*.

[2] It will be recalled that in the course of negotiations Libya had continuously rejected the median line or equidistance method as a basis of either negotiation or delimitation.

[3] A copy of this letter is attached as *Annex 63*.

4.72 On 2 March 1977 the Libyan General People Congress initiated procedures which, among other things, transferred responsibility for ratifying agreements from the Revolutionary Command Council, where it had been provisionally vested, to the Basic People's Congresses. These new procedures were ultimately enacted by the Basic People's Congresses during their fall session in October and November 1978.

4.73 Meanwhile, on 7 December 1977, the Government of Malta entered into an agreement with the foreign oil companies that held offshore Maltese concessions whereby the companies undertook to refrain from exploration activities in the concession blocks south of Malta until the delimitation dispute had been settled by the Court. This action was consistent with the understanding Libya and Malta had reached at the time of the signing of the Special Agreement to the effect that both sides would refrain from commencing drilling operations until the Court had reached its decision and an agreement on delimitation had been reached[1]. The agreement with the oil companies was subsequently announced by Prime Minister Mintoff at a session of the Maltese Parliament held on 16 January 1978.

4.74 During 1978, there were further contacts between the two Parties on a wide range of bilateral issues, including the question of the continental shelf. From 3 to 5 May 1978, for example, talks were held in Malta between a Libyan delegation headed by the Secretary of Marine Transport, Mansour Mohammed Badr, and a Maltese delegation headed by the Deputy Prime Minister, Joseph Cassar. In July, Colonel Ghadaffi travelled to Malta for meetings, as did a separate Libyan delegation headed by the Secretary of the Treasury.

4.75 On 16 October 1979 discussions were renewed at a meeting held in Tripoli between Major Jalloud and Prime Minister Mintoff. As before, these talks addressed a wide range of bilateral issues. They also touched upon fresh Libyan and Maltese proposals regarding the continental shelf dispute[2]. According to the joint minutes of this meeting, Mr. Mintoff proposed that a five-mile buffer zone be created on either side of a median line, north of which Malta would be allowed to exploit the resources and south of which Libya could do the same. Major Jalloud responded by stating that Libya could not agree to Malta's proposal for the "division" of the shelf. Instead he proposed that Libya would "reconsider the agreement of May 1976 which had not been ratified by the People's Congresses" if certain amendments to the provisions of the Special Agreement could be accepted by Malta. The joint minutes then conclude as follows:

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[1] See the Report by the Secretary-General on the Mission of his Special Representative to Malta and the Libyan Arab Jamahiriya, U.N. Doc. S/14256, dated 13 Nov. 1980, p. 2, attached as *Annex 72*.

[2] See *Annex 64*.

> "After a lengthy discussion it was agreed that the experts of the two countries should meet at the beginning of November to outline a proposal taking into consideration the interest of both sides."

Thus it became evident that the two Parties had embarked on an effort to find a satisfactory solution to the matter by renegotiating parts of the Special Agreement.

4.76 Shortly afterwards, on 21 November 1979, the Maltese Ministry of Foreign Affairs sent a Note Verbale to the Libyan People's Bureau for Foreign Liaison which also indicated that efforts were being made to reach agreement on the Special Agreement. The Note stated:

> "There seems to be now little time left for the two sides to reach a final agreement capable of being ratified by the Congresses this year unless both sides were to act quickly and with the necessary determination to reach an agreement in time[1]."

More significant, however, was the fact that the Note signalled a sharp change of policy on the part of Malta. After suggesting that the buffer zone mentioned above be enlarged from five miles on each side of the median line to fifteen, the Note went on to announce that—

> "... the Government of the Republic of Malta has no option but to confirm that it cannot postpone any further the exploitation of the area of the continental shelf between the two countries which it firmly believes to appertain to the Maltese people. The Maltese Government has commitments which it must honour and drilling must therefore start in the near future in the area north of the line A.B shown in the attached Map[2]."

4.77 To appreciate the significance of this change, it is necessary to recall that since 1974 — the year in which both Libya and Malta granted concessions in the areas lying between the two countries — both Parties had refrained from authorising drilling in the disputed area. Indeed, there had been an understanding between the Parties at the time they signed the Special Agreement that exploration activities in the area in dispute would be suspended pending the resolution of the case by the Court. Moreover, Malta had made an agreement to this effect with its concession holders in 1977[3].

4.78 One week after the Maltese Note was sent, the experts of the two sides met to follow up on the discussion that had occurred between Major

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[1] A copy of this Note is attached as *Annex 65*.

[2] The line A.B. was a line parallel to the Maltese proposed median line 15 miles to the north of it, but, as shown on the map, line A.B. extended less far to the east than did the Maltese proposed median line.

[3] See para. 4.73 above.

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Jalloud and Prime Minister Mintoff. At the meeting the Parties discussed certain aspects regarding the amendment of the Special Agreement, but no agreement was reached.

4.79 Malta's decision to go ahead with drilling in the disputed areas was confirmed by Mr. Mintoff in a report he sent to Colonel Ghadaffi on 23 April 1980. On 10 May 1980 the Libyan Secretariat sent a Note Verbale to the Maltese Embassy in Tripoli reserving its position as to Malta's concession actions and confirming "its non-recognition of any activities, contracts and assignments, previous or forthcoming, which would affect its sovereignty[1]." Malta responded with a Note Verbale dated 21 May 1980 from the Ministry of Foreign Affairs to the Libyan Popular Committee in which it rejected Libya's claims[2].

4.80 On 10 August 1980 the Texaco group, acting within Maltese Block No. 3 on the Medina Bank south of the Libyan claim of 1973, spudded the first wildcat well to be drilled in the area[3]. The drilling itself was undertaken by an oil rig operated by the Italian contractor, Saipem, at the coordinates 35°N; 15° 18′ E. These actions brought on a prompt Libyan response. By letter dated 20 August 1980 the Libyan Secretary of Oil warned the Manager of Texaco that drilling operations should be halted immediately and the rig removed[4]. This warning was repeated by telex to the Chairman of Texaco Malta, Inc. On 21 August an official of the Libyan navy delivered a similar written warning to the manager of the Saipem drilling platform on board the rig. In response, the Chairman of Saipem notified the Libyan authorities through Saipem's representative in Tripoli that drilling operations would be suspended and steps taken to put the well into a safe condition[5]. Subsequently the rig was withdrawn.

4.81 The commencement of drilling activities triggered an unfortunate series of events and put a strain on the relations between the two countries. By a letter dated 1 September 1980 the Maltese Permanent Representative to the United Nations requested the President of the Security Council to convene an urgent meeting of the Security Council to consider the incident[6]. On 3 September 1980 the Deputy Permanent Representative of Libya to the United Nations sent a letter to the President of the Security Council indicating Libya's views on the Maltese letter[7].

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[1] A copy of this Note is attached as *Annex 66*.

[2] A copy of this Note is attached as *Annex 67*.

[3] "Spudding" refers to the first boring of the hole in the drilling of a well.

[4] A copy of this Note is attached as *Annex 68*.

[5] A copy of Saipem's message to the Libyan Secretary of Oil is attached as *Annex 69*.

[6] U.N. Doc. S/14140, 1 Sep. 1980; a copy of this letter is attached as *Annex 70*.

[7] A copy of this letter, U.N. Doc. S/14145, 3 Sep. 1980, is attached as *Annex 71*.

4.82 There then followed a protracted series of diplomatic exchanges between the Parties, with the Secretary-General of the United Nations, and with various third States. The Security Council also held hearings on the matter. For present purposes it is sufficient to note that, after consulting with both Parties, the Secretary-General decided to send a special representative to discuss the issue with the two sides. The Special Representative, Mr. Diego Cordovez, prepared a report on his mission after having met with representatives of both Libya and Malta from 29 October to 2 November 1980. In Libya's view the Special Representative's Report, dated 13 November 1980, accurately summarises the events that transpired between the Parties leading up to the incident of 20 August 1980. A copy of this Report has been attached to this Memorial as *Annex 72*[1].

4.83 On 4 January 1981 the Basic People's Congresses ratified the Special Agreement subject to the provision that no drilling take place in the disputed area until after the Court concluded its examination of the case. An instrument of ratification was drawn up to this effect, and Malta was officially notified that the Special Agreement had been ratified[2]. After Malta objected to the terms of Libya's ratification, a renewed series of meetings and exchanges took place in an effort to resolve the issue. These proved inconclusive. Meanwhile, Malta filed an Application for permission to intervene in the *Tunisia/Libya* case on 28 January 1981. In its Judgment of 14 April 1981, the Court found that the Application could not be granted[3].

4.84 In order to avoid unnecessary detail, attention is drawn here to two United Nations documents which reflect these aspects of the dispute. The first is an account of the Secretary-General to the Security Council on the Libya-Malta dispute dated 30 July 1981[4]. It is attached as *Annex 74*. The second is the Special Representative's second Report on the situation which the Secretary-General submitted to the President of the Security Council on 1 December 1981[5]. A copy of this Report may be found in *Annex 75*. The report itself resulted from a suggestion of the President of the Security Council in September 1981 that the Special Representative renew his contacts with both Parties.

4.85 There ensued a series of delays regarding the exchange of instruments of ratification. Ultimately, however, the Parties held discussions in

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[1] U.N. Doc. S/14256, 13 Nov. 1980.

[2] See a copy of a Note Verbale dated 26 Jan. 1981 from the Libyan People's Bureau in Malta to the Maltese Ministry of Foreign Affairs, attached as *Annex 73*.

[3] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application to Intervene, Judgment, I.C.J. Reports 1981*, p. 20, para. 37.

[4] U.N. Doc. S/PV. 2294, 30 July 1981, pp. 6-7.

[5] U.N. Doc. S/14786, 9 Dec. 1981.

Valletta from 18 to 20 March 1982. These culminated in the exchange of Instruments of Ratification of the Special Agreement on 20 March. On the same day the Libyan Secretary of the People's Bureau for Foreign Liaison and the Maltese Minister of Foreign Affairs signed a *procès-verbal* by which they agreed that their respective agents would jointly notify the Special Agreement to the Court on 26 July 1982[1].

4.86 In the light of these events, it is apparent that ever since 1973 Malta has been pressed by its concession holders to drill in the disputed area. This much is clear from the Maltese documents themselves, most notably the written message dated 23 April 1973 from Prime Minister Mintoff to Colonel Ghadaffi[2] and the Note Verbale dated 21 November 1979 from the Maltese Ministry of Foreign Affairs to the Libyan People's Bureau for Foreign Liaison[3]. To this end Malta's efforts to explore and exploit the offshore areas revolved around the use of the median line as a *de facto* line of delimitation with Libya. Reliance on the "Median Line" appeared not only in Malta's correspondence, but in its internal legislation as well. Libya refused to accept either the "Median Line" as a basis for delimitation, or the equidistance method as the framework for negotiations. Instead, Libya has attempted to keep communication open with Malta in order to find an equitable solution to the dispute.

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[1] A copy of this *procès-verbal* is attached as *Annex 76*.

[2] See *Annex 41*.

[3] See *Annex 65*.

PART II

THE LAW

CHAPTER 5

THE SPECIAL AGREEMENT

5.01 This Chapter will examine the provisions of the Special Agreement, focusing on the nature of the request made to the Court by the Parties. The English text of the Special Agreement has been set forth in paragraph 4 above. Nevertheless, it may be convenient to repeat here Articles I and III[1], which read as follows[2]:

> "ARTICLE I
>
> The Court is requested to decide the following question:
>
> What principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic, and how in practice such principles and rules can be applied by the two Parties in this particular case in order that they may without difficulty delimit such areas by an agreement as provided in Article III."
>
> "ARTICLE III
>
> Following the final decision of the International Court of Justice, the Government of the Republic of Malta and the Government of the Libyan Arab Republic shall enter into negotiations for determining the area of their respective continental shelves and for concluding an agreement for that purpose in accordance with the decision of the Court."

5.02 The general intent of the request to the Court made by Article I is clear from the text. The Court is asked to say what principles and rules of international law are applicable to the delimitation in the present case and "how in practice" those principles and rules can be applied by the two Parties. In other words, the proceedings are concerned with the statement by the Court of the applicable principles and rules of international law and their application by the Parties. It is for the Court to decide "how in practice such principles and rules can be applied by the two Parties in this particular case." It is for the Parties, acting in accordance with the decision of the Court, to draw by agreement the boundary line between the areas of continental shelf appertaining to each of them.

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[1] As noted in para. 3 above, both the Arabic and English texts are equally authentic.

[2] Article II provides for the submission of written pleadings and for the order of speaking at the oral hearings to be decided by mutual agreement. As stated in para. 6 above, it has been agreed by the Parties that at the oral hearings the representatives of Malta will speak first.

5.03 Although the general intent of Article I is clear, it may be useful at this stage to present some observations on the nature and scope of the request made by that Article. Some light may be thrown on the question of interpretation by a comparison of the Special Agreement in the present case with those in the *North Sea* cases, the ***Anglo-French Arbitration*** and the ***Tunisia/Libya*** case[1].

5.04 All four Special Agreements have some elements in common, but most clearly distinguishable from the present case is the request in the *Anglo-French Arbitration* which asked the Court in that case to decide, in accordance with the rules of international law applicable in the matter as between the Parties, the actual course of the boundary. That request did not ask the Court to pronounce on the applicable principles and rules of international law, which the present request does; on the other hand, it did ask the Court to determine the course of the boundary, which the present request does not. Accordingly, there is no real comparison between the request in the present case and the one made in the *Anglo-French Arbitration*.

5.05 A comparison may, however, be made between the requests in the other three cases. In the view of Libya, the scope of the present one falls between the scope of the requests in the *North Sea* cases and the one made in the *Tunisia/Libya* case. This is apparent not only from the wording of the requests, but also from the context in which they appear. The present request is similar to the requests in the *North Sea* cases in asking the Court to decide on the applicable principles and rules of international law and leaving it to the Parties to effect the delimitation by agreement in accordance with the decision of the Court[2]. However, the present request goes further by asking the Court to decide "how in practice the principles and rules can be applied by the two Parties in this particular case". Article I of the Tunisia/Libya Special Agreement also requested a decision on the applicable principles and rules, but the language used goes even further in the direction of precision and specificity. In a separate sub-paragraph, it requested the Court "to *clarify* the practical method *for*

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[1] For convenience of reference, the texts of the Special Agreements in these three cases are attached as *Annexes 77, 78* and *79* respectively. The relevant articles are: in the *North Sea* cases, Article 1; in the *Anglo-French Arbitration*, Articles 2 and 9; and in the *Tunisia/Libya* case, Articles 1, 2 and 3. For convenience, the *Arbitration Between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf, Decisions of the Court of Arbitration dated 30 June 1977 and 14 March 1978*, presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty, March 1979, London, H. M. Stationery Office [1979], Misc. No. 15, 203 pages (Cmnd. 7438) and the arbitration proceedings themselves are referred to in this Memorial as the *"Anglo-French Arbitration"*.

[2] It may be recalled that the Judgment in the *North Sea* cases reflected the generality of the request and enabled the Parties to reach agreement among themselves on the delimitation of their areas of continental shelf.

the application of these principles and rules in this specific situation[1]" so as to enable "the experts of the two countries" to delimit the areas. Comparison of the language supports the more general interpretation of Article I of the Special Agreement in the present case. For example, the Tunisia/Libya request used the word "clarify" (in the Tunisian version "specify precisely"); the present request does not. The former used the affirmative expression "for the application"; the latter uses the words "can be applied". The former leaves delimitation to "the experts"; the latter reserves the application of the principles and rules to "the two Parties". The significance of the last-mentioned provision is underlined by Article III of the Special Agreement which requires the two Governments "to enter into negotiations for determining the area of their respective continental shelves...[2]".

5.06 The absence of any reference to "experts" and the provision for "negotiations" imply a significant difference from the Tunisia/Libya Special Agreement. In that Agreement, there was no mention of the word "negotiations", and the delimitation by the experts in accordance with Article 1 and the determination of the delimitation line by the Parties contemplated by Article 2 were viewed almost as a purely technical implementation of the Court's Judgment. To this extent, therefore, the present situation is more closely analogous to that presented in the *North Sea* cases, where Article 1, paragraph (2) of the Special Agreement(s) provided that following the Judgment the Parties "... shall delimit the continental shelf in the North Sea as between their countries by agreement in pursuance of the decision requested from the International Court of Justice[3]". Nevertheless, the decision requested in the present case is still not on the same level of generality as that in the *North Sea* cases.

5.07 Article I of the Special Agreement in the present case requests the Court to decide "how in practice" the principles and rules can be applied by the Parties so that they may delimit the areas of continental shelf appertaining to them without difficulty. This request does not presuppose that there will necessarily be one method or one rigid rule automatically to be applied in the case. What degree of precision then is required of the Court in reaching its judgment in this case? In the *Tunisia/Libya* case, in the context of a similar question, the Court stated that "... it has in any case to be precise as to what it decides ...[1]". A certain degree of precision must naturally be viewed as being an inherent part of the formulation of a decision rendered with binding force in connection with contentious proceedings. Thus, although it is Libya's view that the Court need not, in the present case, specify or particularise one "method of delimitation", or even one way or manner by which or "how in practice ... [the] principles and rules can be applied", it is nevertheless also Libya's view that the goal to be reached is the result which would be in accord with equitable principles and represent the most appropriate application of the existing principles and rules of international law. This would naturally involve an assessment by the Court of the relevant circumstances and the weight to be attached to them.

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[1] According to the English translation by the Registry of the French version supplied by Tunisia to the Court, this passage should read, "to *specify precisely* the practical way in which the aforesaid principles and rules *apply* in this particular situation". *I.C.J. Reports 1982*, p. 18, at p. 21 (italics added here and in the text above).

[2] The negotiations so indicated and the agreement contemplated in Article III will, of course, follow the Court's decision as to the principles and rules of international law applicable in this case and "how in practice" they may be applied.

[3] Referring to the provisions of those Special Agreements, which were analogous to Article III of this Special Agreement, the Court in 1969 stated that:

> "The Court is not asked actually to delimit the ... boundaries which will be involved, this task being reserved by the Special Agreements to the Parties, which undertake to effect such a delimitation 'by agreement in pursuance of the decision requested from the ... Court' — that is to say on the basis of, and in accordance with, the principles and rules of international law found by the Court to be applicable." (*North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 13, para. 2.)

5.08 Against the background of the above observations on Articles I and III of the Special Agreement, it is appropriate to recall what the Court had to say in its 1982 Judgment as to its task. In paragraph 29 of the Judgment the Court said: "What the Court is asked to do is to render a judgment in a contentious case in accordance with Articles 59 and 60 of the Statute and Article 94, paragraph 2, of the Rules of Court ...[1]". It is clear that the Court is faced with the same situation in these proceedings; it is to render a Judgment in a contentious case in accordance with those Articles of the Statute and Rules and with binding force and effect for the purpose of *res judicata*. There can be no question of the binding force of the Judgment sought herein, or indeed of the validity or effectiveness of the Judgment being in any manner dependent upon the will or approval of either or both Parties.

5.09 Turning again to the text of the Special Agreement, Article I asks the Court to indicate the principles and rules of international law which may be applicable. A detailed analysis of the principles and rules will be taken up in the following Chapter of this Memorial. It suffices to say at this stage that the Special Agreement, as a convention in force as between Libya and Malta, does not refer to any specific principles or rules of law expressly recognised by the Parties as being for the Court to apply.

5.10 It is now appropriate to turn from consideration of the text of the Special Agreement to consideration of the principles and rules of international law which are to be indicated by the Court for application by the Parties to the facts of this case.

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 40, para. 29.

CHAPTER 6

THE PRINCIPLES AND RULES OF INTERNATIONAL LAW APPLICABLE TO THE PRESENT CASE

Introduction

6.01 The purpose of this Chapter is to present to the Court a succinct statement of the applicable law, as perceived by Libya. To that end, Sections A and B deal with an important legal distinction of considerable consequence for the present case. This is the distinction between principles and rules governing the legal basis of a State's *entitlement* to shelf (that is Section A); and the principles and rules governing the *delimitation* of shelf boundaries between States with opposite or adjacent coasts (that is Section B). Section C concludes this Chapter by discussing the role of proportionality in the delimitation process.

6.02 It may be helpful, in this Introduction, to stress the importance which Libya attaches to the distinction made in Sections A and B. The distinction between the basis or "root" of title and the precise delimitation of the area of land governed by that title is common to most, if not all, legal systems. Throughout the evolution of the legal regime of the continental shelf this distinction has been maintained.

6.03 In the Truman Proclamation of 1945[1], the title of the United States to its adjacent shelf was predicated on various grounds. It was "an extension of the land-mass"; it often contained a "seaward extension of a pool or deposit lying within the territory"; its exploitation would be "contingent upon cooperation and protection from the shore" and would be of paramount concern to the coastal State because of "self-protection". Yet, separate from these considerations in the Preamble, the reference to the problem of delimitation with neighbouring States was to be found in the dispositive part, and it was in this reference that the terms "in accordance with equitable principles" were to be found.

6.04 Conventional law has adhered to this same distinction between legal entitlement and delimitation. In the 1958 Convention[2], Article 1 dealt with the definition of the shelf and its outer limits, Article 2 with the nature of the coastal State's rights over the shelf, and Article 6 with delimitation of boundaries between States adjoining the same shelf. In its 1969 Judgment the Court noted: "Article 1 is concerned only with the outer, seaward, limit of the shelf generally, not with boundaries between the shelf areas of opposite or adjacent States. Article 2 is equally not concerned with such boundaries[1]." Under the United Nations Convention on the Law of the Sea, Article 76 defines the shelf and its outer limits; Article 77 defines the nature of the coastal State's rights (and are thus analogous to Articles 1 and 2 of the 1958 Convention); and Article 83 deals with delimitation (and is thus analogous to Article 6)[2].

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[1] Proclamation No. 2667 of 28 Sep. 1945, 10 *Federal Register* 12303 (2 Oct. 1945). (A copy of this Proclamation is attached as *Annex 80.*)

[2] The text of this Convention is attached as *Annex 81*.

6.05 Nevertheless, a certain conceptual problem may appear insofar as Article 76 of the Convention on the Law of the Sea incorporates the concept of "natural prolongation" within the definition of the shelf, and the Court itself in its 1969 Judgment referred to the concept as the source of an *ipso jure* title[3]. At the same time, in the *North Sea* cases, and in later cases such as the *Anglo-French Arbitration* and the *Tunisia/Libya* case, the concept has been used in the context of delimitation.

6.06 In Libya's view, however, the problem is more apparent than real. The definition of the shelf contained in Article 76 is what may be termed an "absolute" definition. It postulates outer limits *where no problems of delimitation with neighbouring States arise*. Thus, entitlement and delimitation (in terms of absolute outer limits) go hand in hand when the issue is one of distinguishing between an area within national jurisdiction and an area beyond it. Whether the outer limits are defined in terms of a 200 mile limit or the outer edge of the continental margin, the correlation between entitlement and outer limits exists precisely because no question of a boundary with a neighbouring State is contemplated[4].

6.07 In many cases, however, the situation will be very different. In the North Sea, for example, the "absolute" definition of the continental shelf was without object for the very obvious reason that the shelf area was fringed by States adjoining the same shelf, and there could not be any question of outer limits, but only one of delimitation. The Mediterranean is a similar case, if only because of the fact that the coastal States either adjoin the same shelves or have continental margins which meet, and so there is likely to be no area which lies beyond the limits of national jurisdiction. Thus the concept relating to "outer limits" loses its practical relevance in the Mediterranean. The issue becomes, necessarily, one of delimitation rather than of entitlement in any absolute sense.

6.08 There remains, however, the principle of natural prolongation. Does this, too, lose all relevance? In Libya's view it does not. The reasons for this have, in Libya's view, been amply demonstrated in earlier judgments of the Court. As the Court stressed from the outset: "The institution of the continental shelf has arisen out of the recognition of a physical fact...[1]". The physical facts must, in principle, remain relevant to questions both of entitlement and of delimitation. Not only does the physical fact of natural prolongation operate throughout the shelf area (unlike the 200 mile limit which is an arbitrary limit and which operates only as the outer limit), but it also provides the basis for a distinction vital for delimitation purposes, namely between:

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[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 40, para. 67.

[2] For convenience, the United Nations Convention on the Law of the Sea is referred to in this Memorial as the "Convention on the Law of the Sea". A copy of the text of Part VI of this Convention, Articles 76 to 85 pertaining to the continental shelf, is attached as *Annex 82*.

[3] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 31, para. 43.

[4] Indeed, paragraph 10 of Article 76 states: "The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts."

(i) a situation where neighbouring States are located on *different* shelves, in terms of distinct natural prolongations; and

(ii) a situation where neighbouring States are located on the *same* shelf, and where the shelf area in question may be regarded as much the natural prolongation of the one as of the other on the geological and geomorphological evidence.

6.09 This distinction is basic to the conceptual relationship between "natural prolongation" and delimitation. For, as will become apparent in the sections that follow, in the first situation the evidence of "natural prolongation" is fundamentally evidence of a geological and geomorphological character and serves to establish the basis for the boundary between different shelves: thus legal entitlement and delimitation go hand in hand. In the second situation where natural prolongations meet and overlap, and both States may on that basis claim legal entitlement to overlapping areas of a common shelf, the geological or geomorphological structure of the shelf may still serve as a useful or even determinant criterion for delimiting the shelf. Its role, however, is that of a relevant factor, not that of a limit to the area of entitlement[2], and legal entitlement on the basis of natural prolongation and delimitation no longer have any necessary correlation.

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[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 51, para. 95.

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 46, para. 43; p. 57, para. 66; and p. 58, para. 68.

A. Principles and Rules Governing a State's Legal Basis of Title to the Continental Shelf

1. Natural Prolongation as the Basis of Title

6.10 The law by virtue of which both States claim entitlement is, of course, international law. The Special Agreement does not contain any special rules agreed between the Parties and applicable in the present case as regards entitlement or delimitation. In the present case, neither the 1958 Convention nor the Convention on the Law of the Sea apply — in the first case because Libya is not a Party and in the second case because the Convention on the Law of the Sea is not yet in force and has not been signed by Libya. Given the absence of any treaty or convention providing rules directly applicable in the present dispute, it follows that the Court is asked to give expression to the principles and rules of customary international law.

6.11 In the *North Sea* cases, the Court started from the basic premise that the *ipso jure* title of the coastal State to the submarine areas in front of its coast is based on the geological fact of the prolongation of its land territory into and under the sea:

> "What confers the *ipso jure* title which international law attributes to the coastal State in respect of its continental shelf, is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already has dominion, — in the sense that, although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea[1]."

From that premise the Court drew the conclusion that only this natural prolongation, not mere proximity to points of the coastline, could confer title to the continental shelf areas:

> "From this it would follow that whenever a given submarine area does not constitute a natural — or the most natural — extension of the land territory of a coastal State, even though that area may be closer to it than it is to the territory of any other State, it cannot be regarded as appertaining to that State; — or at least it cannot be so regarded in the face of a competing claim by a State of whose land territory the submarine area concerned is to be regarded as a natural extension, even if it is less close to it[2]."

Thus, the Court considered the identification of the natural prolongation of a State's territory into and under the sea as a necessary and indeed indispensable basis for a claim of a coastal State to submarine areas in front of its coast under the legal concept of the continental shelf.

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[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 31, para. 43; see also p. 22, para. 19; and p. 51, para. 95.

[2] *Ibid.*, p. 31, para. 43.

6.12 This view of the basis of title is entirely consistent with the development of the legal concept of the continental shelf and it may be useful to review, briefly, the successive stages in the evolution of this concept.

(a) The Truman Proclamation of 1945

6.13 It may be recalled that the Proclamation of the President of the United States of 28 September 1945, which initiated the world-wide claim for coastal States' exclusive jurisdiction over the resources of the sea-bed and subsoil adjacent to their coasts, had justified such jurisdiction on the ground that the continental shelf is to be regarded "as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it[1]." The proclamation also cited other grounds for the justification of the claim to continental shelf jurisdiction (possible seaward continuation of land deposits, dependence on the coast for effective exploitation, need for supervision over activities before the coast for security reasons); but these grounds were more valid in the immediate adjacency of the coast than further out in the sea. The geological fact of natural prolongation was thus relied upon from the beginning as the legal justification for continental shelf jurisdiction, even before it had been identified by the Court in its 1969 Judgment as the legal basis for a coastal State's continental shelf jurisdiction under general international law. Indeed, the position adopted by the United States in the Truman Proclamation was quickly adopted by other States and, as will be seen in the following section, formed the basis for the work of the International Law Commission in preparing the draft articles for the 1958 Convention.

(b) The Preparation of the 1958 Convention

6.14 In the preparation of the 1958 Convention, the proposition that natural prolongation is the legal basis for the coastal State's exclusive jurisdiction over the submarine areas adjacent to its coast was never disputed, although it did not find verbal expression in the Convention itself. In the discussions of the International Law Commission and of the First United Nations Conference on the Law of the Sea which led to the adoption of the 1958 Convention, the "natural prolongation" argument played a relatively minor role in the prolonged and sometimes confusing controversy about the definition of the "continental shelf" in the legal sense: that is, the definition of the submarine areas to which the legal regime of the Convention should apply. This was, however, not due to the fact that natural prolongation as the source of the coastal State's title was considered irrelevant or disputed; the coastal State's title to the submarine areas in front of its coast was already generally accepted at this stage of the discussion. The discussion centered rather around the problem to what extent the definition of the area over which the coastal State would exercise jurisdiction — in particular its seaward limit — should be linked to the existence of a continental shelf in the geological sense.

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[1] The contrary view, rejected by the Truman Proclamation, was that title arose from some notional "occupation" of the sea-bed as *res nullius*. See, for example, HURST, Sir Cecil J.B., "Whose is the Bed of the Sea?" *The British Year Book of International Law*, 1923-1924, pp. 34-43; VALLAT, F., "The Continental Shelf" *ibid.*, 1946, pp. 333-338 at p. 334 (a copy of this page is attached as *Annex 83*); WALDOCK, H., "The Legal Basis of Claims to the Continental Shelf", *The Grotius Society, Transactions for the Year 1950*, Vol. 36, 1951, pp. 115-148 at p. 146 (a copy of this page is attached as *Annex 84*).

6.15 The main preoccupation of those who drafted the definition, which later became Paragraph (1) of Article 1 of the 1958 Convention, was to formulate a definition which would cover also those situations where there was no clear evidence of a continental shelf in the physical sense. Therefore, Article 1 of the 1958 Convention was drafted in a way which avoided any reference to geological criteria and defined the "continental shelf" as a legal term for the identification of the submarine areas under national jurisdiction only by the criteria of "adjacency" and depth or "exploitability". This definition of the submarine areas to which the legal continental shelf regime applies was to a great extent influenced by a similar definition contained in a resolution of the Inter-American Conference at Cuidad Trujillo (15 to 28 March 1956) which used the same criteria[1].

6.16 Since Paragraph (1) of Article 1 of the 1958 Convention was designed to define the seaward limits of national continental shelf jurisdiction — and not to describe the source of title to these submarine areas — it would be erroneous to conclude from the wording of the article that the physical fact of "natural prolongation" had become irrelevant; it still constituted the basic justification for the coastal State's jurisdiction over the submarine areas adjacent to its coast. The Court, in considering "natural prolongation" as the fundamental basis of continental shelf rights in 1969, was therefore not at variance with the definition of the continental shelf contained in Article 1 of the 1958 Convention. Moreover, the dictum of the Court with respect to the entitlement to continental shelf areas must be regarded in its proper perspective: the Court was not asked to pronounce on the outer, seaward limit of the continental shelf regime as defined in Article 1 of the Convention, or on the identification of areas where the existence of a continental shelf in the geological sense becomes doubtful. In the *North Sea* cases there had been no doubt that the area which was to be delimited consisted of continental shelf in the geological sense.

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[1] The definition was as follows:

> "The sea-bed and subsoil of the continental shelf, continental and insular terrace, or other submarine areas, adjacent to the coastal state, outside the area of the territorial sea, and to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil, appertain exclusively to that state and are subject to its jurisdiction and control." Resolution of Ciudad Trujillo, in *Inter-American Juridical Yearbook, 1955-1957*, Pan American Union, Washington D.C., 1958, p. 261. (A copy of this page is attached as *Annex 85*.)

The reason for this formula has been explained by a member of the International Law Commission, which took over the substance of the Trujillo formula (GARCIA AMADOR, F.V., *The Exploitation and Conservation of the Resources of the Sea*, Leyden, Sythoff, 1959, p. 108; a copy of this page is attached as *Annex 86*):

> "The formula adopted at Ciudad Trujillo is designed to place all coastal States on an equal footing with respect to the submarine areas adjacent to their respective territories.... The geographical configuration of the bed of the sea contiguous to the coast of continents and islands is sometimes so irregular that it cannot be defined in terms of the shelf or terrace concepts. When this is so, as in the case of some countries in the American continent and elsewhere, the coastal State may exercise the same exclusive rights now enjoyed by those which have a continental or insular shelf and terrace, provided the depth of the superjacent waters admit of the exploitation of the natural resources of the seabed and subsoil and that the submarine area be adjacent to the territory of the coastal State."

(c) The Third United Nations Conference on the Law of the Sea

6.17 The definition of the continental shelf in the legal sense was further elaborated and in its scope expanded by the Third United Nations Conference on the Law of the Sea. At the initial stage of the Conference during the second session in 1974, the discussion centered mainly on the question of the extent to which the continental shelf regime should remain independent from the regime of the 200-mile exclusive economic zone and whether natural prolongation should be introduced into the definition of the continental shelf for defining the outer, seaward limit of national jurisdiction. In the discussion, three main trends became evident: the first wanted to subsume the concept of the continental shelf under the concept of the exclusive economic zone on the basis of a simple distance criterion of 200 miles and thus disregard natural prolongation; the second wanted to define the continental shelf primarily by a minimum distance of 200 miles and further seaward throughout the natural prolongation where such a prolongation extended beyond 200 miles; and the third wanted to define the continental shelf as extending to the outer edge of the continental margin, but at least to a distance of 200 miles where the continental margin did not extend to that distance[1].

6.18 In this discussion the supporters of the "natural prolongation" criterion relied heavily, and successfully, on the Court's 1969 Judgment. In the informal consultations which were held during the Third Session of the Conference in Geneva in 1975, the opinion prevailed that the legal regime of the continental shelf should remain distinct from the concept of the exclusive economic zone and the natural prolongation criterion should become the main criterion for the definition of the continental shelf

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[1] See Working Paper of the Second Committee: Main Trends, Provision 68, Third United Nations Conference on the Law of the Sea, *Official Records*, Vol. III, pp. 117-118. (A copy of these pages is attached as *Annex 87*.)

(although supplemented by the 200-mile "distance criterion" where the geological shelf does not extend to this distance). The outcome of the informal consultations was reflected in the following definition of the continental shelf which appeared in the first negotiating text issued by the Chairman of the Second Committee of the Conference at the end of the Third Session in Geneva:

> "The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance[1]."

This part of the definition of the continental shelf remained unchallenged until the end of the Conference, and has now become Paragraph (1) of Article 76 of the Convention on the Law of the Sea finally adopted by the Conference on 30 April 1982.

6.19 During the following sessions of the Conference from 1976 to 1980 the main controversy with respect to the definition of the continental shelf centered around the problem whether, and if so up to what distance, national continental shelf jurisdiction should extend beyond 200 nautical miles where the continental margin extended further than this distance. The supporters of such an extension relied heavily on the "natural prolongation" criterion and defended their claim as being the logical consequence of this criterion. The opponents pointed out that such a conclusion would completely lose sight of the criterion of "adjacency" which had been an important element in Article 1 of the 1958 Convention and would encroach on the resources of the high seas as being the common heritage of mankind. In the present case the outer limit of the continental shelf is not at issue — nor was it in the *North Sea* cases — and therefore the question can be left aside whether the supporters of an extension of national continental shelf jurisdiction beyond 200 miles were right in relying on the "natural prolongation" criterion as developed by this Court. Eventually consensus was reached at the Conference to the effect (as now embodied in Paragraphs 2 to 7 of Article 76 of the Convention on the Law of the Sea) that national continental shelf jurisdiction would, in principle, encompass the whole "continental margin" (that is, the geomorphological "shelf", "slope" and "rise") but would not extend beyond 350 nautical miles or 100 nautical miles beyond the 2,500 metre isobath. Thus, under the Convention on the Law of the Sea the "natural prolongation" criterion would also be the fundamental basis for national continental shelf jurisdiction beyond 200 miles.

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[1] Article 62 of Part II of the Informal Single Negotiating Text, May 7, 1975 — Third United Nations Conference on the Law of the Sea, *Official Records*, Vol. IV, p. 162. (A copy of this page is attached as *Annex 88*.)

6.20 In view of the foregoing, it appears that the deliberations at the Law of the Sea Conference have reinforced, rather than weakened, the fundamental concept of the continental shelf as being the natural prolongation of the land domain. In the *Tunisia/Libya* case, the Court had the opportunity to consider the impact of the deliberations at the Third United Nations Conference on the Law of the Sea on this understanding of the legal concept of the continental shelf. The Court indicated that Article 76 of the Convention on the Law of the Sea "may be relevant as incorporating new accepted trends to be taken into account in the present case[1]". In referring to the definition of the continental shelf contained in Paragraph (1) of Article 76, the Court confirmed that the natural prolongation of the land territory is still the main criterion, and that under the Convention the distance criterion of 200 nautical miles is to become the basis of the title of a coastal State to continental shelf rights over submarine areas only in certain circumstances:

> "That definition consists of two parts, employing different criteria. According to the first part of paragraph 1 the natural prolongation of the land territory is the main criterion. In the second part of the paragraph, the distance of 200 nautical miles is in certain circumstances the basis of the title of a coastal State. The legal concept of the continental shelf as based on the 'species of platform' has thus been modified by this criterion[1]."

6.21 In sum, therefore, it can be asserted that "natural prolongation" remains the fundamental basis of legal title. In Libya's view this is true for the purpose of the present case. For in the present case, where the disputed areas are unquestionably part of the continental shelf (in the physical sense) of one or the other Party, the basis for the entitlement of either Party to any part of this area must be that the part claimed is the natural prolongation of its land territory. Thus, it follows that, as a first step, each Party has to prove that the natural prolongation of its land territory extends into the area in which the delimitation is to be effected. If, as is so in the circumstances of the case now before the Court, there exists a fundamental discontinuity between the shelf area adjacent to one Party and the shelf area adjacent to the other, then the boundary should lie along the general line of that fundamental discontinuity.

6.22 Finally, for the reasons given in paragraph 6.06 above, the new feature[2] of the Convention on the Law of the Sea which uses distance (200 or 350 nautical miles) for the definition of the outer limit of the continental shelf in certain circumstances could have no application to delimitation. Moreover, the Convention itself is not in force either generally or between the Parties to the present case.

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 48, para. 47.

[2] This feature is sometimes referred to for convenience as the "distance criterion".

2. The "Double Aspect" of Natural Prolongation

6.23 In its 1982 Judgment, the Court reaffirmed the "double aspect" of natural prolongation as being, on the one hand, the basis of legal title to continental shelf areas and, on the other hand, a relevant factor in delimiting these areas between neighbouring States. The Court stated:

> "While the term 'natural prolongation' may have been novel in 1969, the idea to which it gave expression was already a part of existing customary law as the basis of the title of the coastal State. The Court also attributed to that concept a certain role in the delimitation of shelf areas, in cases in which the geographical situation made it appropriate to do so. But while the idea of the natural prolongation of the land territory defined, in general terms, the physical object or location of the rights of the coastal State, it would not necessarily be sufficient, or even appropriate, in itself to determine the precise extent of the rights of one State in relation to those of a neighbouring State[1]."

Thus, the jurisprudence of the Court seems to recognise that, although natural prolongation provides the basis for title, there are situations in which natural prolongation is not in itself sufficient to be determinative of a delimitation, but where consideration of other relevant factors is required.

6.24 It is important to recall the fundamental distinction made earlier between two different situations of geological and geomorphological fact, namely where there are in fact *two* separate shelves and where two States share an area of *single* or *common* shelf. This distinction is closely related to the distinction made by the Court.

(a) Situations where there exist two separate shelves

6.25 The Court has recognised that there may well be situations in which the geological and geomorphological evidence indicates "such a marked disruption or discontinuance of the sea-bed as to constitute an indisputable indication of the limits of two separate continental shelves, or two separate natural prolongations[1]". In such a situation there will be virtual identity between the process of recognising title and the process of delimitation because the same evidence which determines title will demonstrate not only the area of entitlement, but also the limits of the natural prolongation with sufficient precision to provide a basis for delimitation provided an obviously inequitable result is not reached.

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 46, para. 43

(b) *Situations where there exists one, continuous shelf adjoined by two or more States*

6.26 Here the situation is very different, for a Court is faced with an area which may be said to be the natural prolongation of all of the adjoining coastal States. The geological and geomorphological evidence ceases to be determinative for delimitation purposes, even though "natural prolongation" remains the basis of the title of each and every adjoining State.

6.27 It was this type of situation which the Court of Arbitration faced in the context of the English Channel[2], and which this Court faced in the Pelagian Block as between Tunisia and Libya[3]. In both cases the Courts appeared not to question that "natural prolongation" was the basis of title, but found little assistance in the geological and geomorphological evidence *for purposes of delimitation*. In the *Tunisia/Libya* case the Court (referring to its 1969 Judgment) said:

> "The Court also attributed to that concept a certain role in the delimitation of shelf areas, in cases in which the geographical situation made it appropriate to do so. But while the idea of the natural prolongation of the land territory defined, in general terms, the physical object or location of the rights of the coastal State, it would not necessarily be sufficient, or even appropriate, in itself to determine the precise extent of the rights of one State in relation to those of a neighbouring State[4]."

And in a subsequent passage it added:

> "It would be a mistake to suppose that it will in all cases, or even in the majority of them, be possible or appropriate to establish that

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 57, para. 66. This approach does not differ in essentials from that of the Court of Arbitration in the *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 63, para. 107, where the Court of Arbitration spoke of "discontinuities" which may, or may not, "disrupt the essential unity of the continental shelf".

[2] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 62, para. 107; p. 92, para. 191; and p. 93, para. 194.

[3] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 53-57, paras. 61-66.

[4] *Ibid.*, p. 46, para. 43.

> the natural prolongation of one State extends, in relation to the natural prolongation of another State, just so far and no farther, so that the two prolongations meet along an easily defined line[1]."

6.28 It is in this category of situation, therefore, that "natural prolongation" in its traditional character as a physical concept cannot be conclusive for delimitation purposes. But it may still retain considerable significance for, as explained below, the geological and geomorphological evidence remains part of the relevant circumstances influencing a delimitation; but such evidence is not, and cannot be, determinative in the same way as it was in the first category of situations.

6.29 In such cases the Courts have necessarily turned to factors such as the geographical configurations of the coasts, proportionality (or disproportionality) as between coastal lengths and sea-bed areas and, above all, to the view that natural prolongation must ultimately be applied as a legal concept in light of the need to secure an equitable result[2].

B. Principles and Rules Governing the Delimitation of the Continental Shelf

6.30 The basic, general principle of international law which governs continental shelf delimitation has been most recently reaffirmed by this Court in its 1982 Judgment in the *Tunisia/Libya* case—

> "... the delimitation is to be effected in accordance with equitable principles, and taking account of all relevant circumstances[3]."

Thus, the application of equitable principles implies that all factors have to be taken into account which are relevant to the particular situation in which the delimitation takes place, and each of them is to be accorded its appropriate weight in the particular circumstances of the case in order to reach an equitable result. Jurisprudence has already stated rules and guidelines as to the selection of the relevant factors and the relative weight which should be accorded to each of them, and the proper course will be to follow and interpret these rules and guidelines for reaching an equitable result also in the present case.

6.31 The following part of the Memorial will analyse the pertinent rules and guidelines for the identification and determination of the relevant factors of delimitation which can be inferred from the jurisprudence, and in particular from the jurisprudence of this Court.

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 47, para. 44.

[2] *Ibid.*, pp. 92-94, para. 133 [*dispositif*].

[3] *Ibid.*, p. 92, para. 133 (A)(1) [*dispositif*].

1. Equitable Principles and the Aim of Securing an Equitable Result

6.32 The dominance of equitable principles in the law governing continental shelf delimitation is not a recent development but, on the contrary, was from the outset an integral part of the new legal regime. In the Truman Proclamation of 1945, for example, it was stated expressly that "in cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles[1]".

6.33 In the subsequent work of the International Law Commission[2] the inherent difficulties of delimitation were recognised and this was reflected in the general preference for delimitation by agreement or by reference to arbitration. The Commission's recourse for advice to the Committee of Experts was not expressed in terms of a search for appropriate rules of law, but rather in terms of a *method* of delimitation. Indeed, given the composition of the Committee of Experts, a body of hydrographers, they could scarcely be expected to advise on the law. Their preferred method, after considerable discussion, was that of equidistance[3]. This was for purposes of delimitation of the territorial sea — a maritime area which, because of its narrowness, limits the scope for distortion which the equidistance method may produce. Moreover, even within the territorial sea the Committee recognised that in "a number of cases this may not lead to an equitable solution, which should then be arrived at by negotiation." This expert body of hydrographers, for whom the equidistance method had an obvious attraction since it suited their particular skills, was therefore fully aware that an equitable solution must predominate over that which might emerge from the automatic application of the equidistance method.

6.34 The adaptation of the method advocated by the Committee of Experts for the territorial sea to the new regime of the continental shelf was accomplished by the International Law Commission in 1953, but with the same important proviso: unless "another boundary line is justified by special circumstances[4]". During the 1958 Geneva Conference various delegations, in discussing the draft article which ultimately became Article 6 of the 1958 Convention, gave examples of situations which might be regarded as "special circumstances", but it was the United States representative in the Fourth Committee who alluded to the role of that concept as being to promote equity[1].

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[1] Proclamation No. 2667, 28 Sep. 1945, 10 *Federal Register* 12303 (2 Oct. 1945). (A copy of this Proclamation is attached as *Annex 80.*)

[2] This is reviewed in the Court's 1969 Judgment, *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, pp. 33-35, paras. 48-54.

[3] For the Report of the Committee of Experts, see U.N. Doc. A/CN.4/61/ Add.1, *Yearbook of the International Law Commission, 1953*, Vol. II, pp. 77-79. (A copy of these pages is attached as *Annex 89.*)

[4] *Report of the International Law Commission to the General Assembly*, U.N. Doc. A/2456, *ibid.*, at p. 216. (A copy of this page is attached as *Annex 90.*)

6.35 This view of Article 6 of the 1958 Convention was emphatically endorsed by the Court of Arbitration in its 1977 Award. That Court said:

> "In short, the rôle of the 'special circumstances' condition in Article 6 is to ensure an equitable delimitation; and the combined 'equidistance - special circumstances rule', in effect, gives particular expression to a general norm that, failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles[2]."

The effect of this Award, therefore, was virtually to assimilate the rule contained in Article 6 of the 1958 Convention with that contained in customary international law as expounded by this Court in its 1969 Judgment.

6.36 The 1969 Judgment had categorically rejected the idea that equidistance was an obligatory method, or that it was an "inherent necessity" of the continental shelf doctrine, or, indeed, that it was a *rule* at all: its status was no more than that of a *method* which might, or might not, be appropriate in the circumstances of a particular case according to whether it produced an equitable result. The emphasis placed by the Court on the need to secure an equitable result — by reliance on equitable principles — in practice enabled the Court to reject extreme claims, whether such claims were based on strict equidistance or on a "just and equitable share", as in the *North Sea* cases, or on other grounds, as in the *Tunisia/Libya* case. The recourse to equitable principles served to provide the Court with the flexibility necessary to ensure an equitable result in circumstances which varied radically from one case to another.

6.37 In giving clear articulation to the paramount role of equitable principles in its 1969 Judgment, the Court was able to affirm that two concepts, namely delimitation by mutual agreement and delimitation in accordance with equitable principles, "have underlain all the subsequent history [since the Truman Proclamation] of the subject[3]". As the Court stated:

> "On a foundation of very general precepts of justice and good faith, actual rules of law are here involved which govern the delimitation of adjacent continental shelves — that is to say, rules binding upon

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[1] United Nations Conference on the Law of the Sea, *Official Records*, Vol. VI: *Fourth Committee*, 24 Feb.-27 Apr. 1958, 32nd Meeting, p. 95. (A copy of this page is attached as *Annex 91*.)

[2] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 48, para. 70.

[3] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 33, para. 47.

> States for all delimitations; — in short, it is not a question of applying equity simply as a matter of abstract justice, but of applying a rule of law which itself requires the application of equitable principles...[1]."

Thus, the Court drew the necessary correlation between the application of equitable principles to questions of delimitation and the taking into account of the relevant circumstances of each particular case:

> "In fact, there is no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures, and more often than not it is the balancing-up of all such considerations that will produce this result rather than reliance on one to the exclusion of all others[2]."

6.38 The cardinal feature of continental shelf delimitations is that a Court is faced with complex situations of fact — with no one situation directly comparable to another — and the facts (or "relevant circumstances") have an importance such that they determine the outcome of the case. The task of the Court therefore lies more in identifying and balancing, or weighing, the various facts or factors relevant to the case than in formulating abstract principles.

6.39 In its 1977 Award, the Court of Arbitration shared this Court's view, as expressed in the 1969 Judgment, on the relationship between the achievement of an equitable solution and the appropriate account to be taken of the relevant circumstances. The Court of Arbitration said—

> "... this Court considers that the appropriateness of the equidistance method or any other method for the purpose of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case[3]."

Thus, the Court of Arbitration also saw its primary task as being that of identifying and evaluating all the relevant circumstances, and it began each section of its award, significantly, by identifying the geographical and other features "which establish the legal framework for its decision[4]...".

6.40 In its 1982 Judgment in the *Tunisia/Libya* case, the Court also recognised the role of equitable principles and stressed the need to achieve an overall equitable result. The Court said:

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[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, pp. 46-47, para. 85.

[2] *Ibid.*, p. 50, para. 93.

[3] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 59, para. 97.

[4] *Ibid.*, p. 61, para. 103 and pp. 109-110, para. 232. It may be noted that the exclusion of geological and geomorphological features was not because the law excluded them but because, given that the Court was dealing with a single, continuous shelf, they had little relevance.

> "Since the Court considers that it is bound to decide the case on the basis of equitable principles, it must first examine what such principles entail.... The result of the application of equitable principles must be equitable. This terminology, which is generally used, is not entirely satisfactory because it employs the term equitable to characterize both the result to be achieved and the means to be applied to reach this result. *It is, however, the result which is predominant; the principles are subordinate to the goal.* The equitableness of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable result. It is not every such principle which is in itself equitable; it may acquire this quality by reference to the equitableness of the solution. The principles to be indicated by the Court have to be selected according to their appropriateness for reaching an equitable result. From this consideration it follows that the term "equitable principles" cannot be interpreted in the abstract; it refers back to the principles and rules which may be appropriate in order to achieve an equitable result. This was the view of the Court when it said, in its Judgment of 1969:
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> > 'It is a truism to say that the determination must be equitable, rather is the problem above all one of defining the means whereby the delimitation can be carried out in such a way as to be recognized as equitable' (*I.C.J. Reports 1969*, p. 50, para. 92).[1]"

6.41 Since the application of equitable principles requires, as a rule of law, consideration of all the relevant circumstances, such an application may be distinguished from the possible consequences of a decision *ex aequo et bono* (which would be possible only under Article 38(2) of the Statute of the Court). As the Court made clear in its 1982 Judgment—

> "...it is bound to apply equitable principles as part of international law, and to balance up the various considerations which it regards as relevant in order to produce an equitable result[2]."

The Court then went on to state:

> "While it is clear that no rigid rules exist as to the exact weight to be attached to each element in the case, this is very far from being an exercise of discretion or conciliation; nor is it an operation of distributive justice[2]."

The emphasis on the aim of securing an equitable result, therefore, demands an examination and careful balancing of all the relevant factors:

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 59-60, para. 70. (Italics added.)

[2] *Ibid.*, p. 60, para. 71.

and this is in no way tantamount to an abandonment of equitable principles but is, rather, the most practicable method of giving them application.

6.42 The Third Law of the Sea Conference followed the Court's view of the law. As will be more fully discussed in the following Chapter, in the final version of Article 83 there is no reference to the median or equidistance line or method, or indeed of any obligatory method of delimitation, and the rule in Article 83 is no more explicit than an obligation to reach agreement "on the basis of international law", but with the fundamental condition that this be "*in order to achieve an equitable solution*[1]".

6.43 Since an equitable solution can only be achieved by identifying and balancing all the relevant factors, it is necessary to examine the role of such factors from a juridical point of view. Accordingly, in the sections that follow, this Memorial will consider first the factor of "natural prolongation" and then, separately, geographic factors and those other factors or relevant circumstances which so far have been recognised as being relevant to delimitation. Finally, the element of proportionality will be discussed in the light of its role as a test of the equity of the result produced. The justification for separate, prior consideration of "natural prolongation" stems from the Court's own treatment of this concept as an integral part of a delimitation in accordance with equitable principles. As the Court said in the *dispositif* in the 1969 Judgment—

> "...delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other[2]".

2. Natural Prolongation as a Relevant Factor

(a) The identification of the respective "natural prolongations" of the Parties

6.44 The Court has stressed that the identification of the natural prolongations of the land territories of the States concerned may have an important role to play in achieving an equitable delimitation. In the *Tunisia/Libya* case the Court stated the following:

> "The satisfaction of equitable principles is, in the delimitation process, of cardinal importance ... and identification of natural prolongation may, where the geographical circumstances are

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[1] Italics added.

[2] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 53, para. 101 (C)(1) [*dispositif*].

> appropriate, have an important role to play in defining an equitable delimitation, in view of its significance as the justification of continental shelf rights in some cases...[1]".

It may be useful at this juncture to go into a more detailed examination of the extent to which the identification of the natural prolongations of the land territories of each of the States concerned may become relevant or even decisive in the delimitation process in general and in the present dispute in particular.

6.45 Both this Court and the Court of Arbitration in 1977 have in their reasoning referred to the possibility that geological features may separate two continental shelf areas so distinctly that the natural prolongation from each side is discontinued at this division. In the *North Sea* cases the Court remarked that with respect to the Norwegian Trough (a feature 200-650 metres deep, and with a width averaging about 80 to 100 kilometres — 43 to 54 nautical miles), fringing the southern and southwestern coasts of Norway:

> "Without attempting to pronounce on the status of that feature, the Court notes that the shelf areas in the North Sea separated from the Norwegian coast by the 80-100 kilometres of the Trough cannot in any physical sense be said to be adjacent to it, nor to be its natural prolongation[2]."

6.46 It was this line of reasoning which the United Kingdom sought to adapt to the feature known as the Hurd Deep and the related Hurd Deep Fault Zone in the English Channel, in the course of the *Anglo-French Arbitration*. The Parties were, of course, disagreed on the significance of the Hurd Deep Fault Zone, with France disputing that these faults had any connection with the Hurd Deep proper. But at least there was no dispute about the existence of the Hurd Deep itself, lying to the north of the Channel Islands. The Hurd Deep is about 80 nautical miles long, an elongated depression with an east-northeast/west-southwest orientation, north of the Channel Islands. The surrounding seafloor is about 80-90 metres (or 40-46 fathoms), whereas the Deep itself varies from 121-240 metres (or 60-120 fathoms) in depth and, in width, from 1-3 nautical miles [1].

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 47, para. 44.

[2] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 32, para. 45. The somewhat fuller description of the Trough given by the U.S. Geographer to the Department of State in *Limits in the Seas*, Office of the Geographer, Department of State, Washington, D.C., No. 10 - Revised, 14 June 1974, at p. 2, is the following:

> "The Norwegian Trench lies off the south and west coasts of Norway. Adjacent to the Norwegian Coast is a narrow bank of water of less than 100 fathoms in depth. [A fathom is approximately 2 metres.] This narrow shelf, which separates the Norwegian Trench from the coast, ranges in width from 2 to 10 nautical miles. The shelf has an average width of about 3 nautical miles. The Norwegian Trench has depths up to 265 fathoms on the west coast and 371 fathoms on the southeast coast. The greatest width of the Trench related to the continental shelf boundary (CSB) is 81 nautical miles, which is at Point 8 of the Norway - United Kingdom agreement. The narrowest width of 20 nautical miles is located at Lindesness on the southern Norwegian coast."

(A copy of this page is attached in *Annex 92*.) See para. 8.07 below for the origins of this feature.

6.47 The United Kingdom argued that the Hurd Deep marked a division between the "natural prolongations" of the United Kingdom and France, forming a "natural boundary". This argument was not accepted by the Court of Arbitration. The Court said:

> "Whichever way the matter is put, the Court does not consider that the Hurd Deep - Hurd Deep Fault Zone is a geographical feature capable of exercising a material influence on the determination of the boundary either in the Atlantic region or in the English Channel. The Court shares the view repeatedly expressed by both Parties that the continental shelf throughout the arbitration area is characterised by its essential geological continuity. The geological faults which constitute the Hurd Deep and the so-called Hurd Deep Fault Zone, even if they be considered as distinct features in the geomorphology of the shelf, are still discontinuities in the seabed and subsoil which do not disrupt the essential unity of the continental shelf either in the Channel or the Atlantic region. Indeed, in comparison with the deep Norwegian Trough in the North Sea, they can only be regarded as minor faults in the geological structure of the shelf; and yet the United Kingdom agreed that the trough should not constitute an obstacle to the extension of Norway's continental shelf boundary beyond that major fault zone. Moreover, to attach critical significance to a physical feature like the Hurd Deep - Hurd Deep Fault Zone in delimiting the continental shelf boundary in the present case would run counter to the whole tendency of State practice on the continental shelf in recent years[2]."

6.48 The reference to the "whole tendency of State practice" was not further amplified, and it is not entirely clear what practice the Court of Arbitration had in mind. There is, however, very clear evidence that the parties to the Australia/Indonesia Agreement of 9 October 1972[3] took

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[1] See para. 8.08 below for the origins of this feature.

[2] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), pp. 62-63, para. 107. The Court's characterisation of the Hurd Deep as a "minor fault" in comparison to the Norwegian Trough is justified by reference to the following figures:

	Hurd Deep	Norwegian Trough
Length	80 nautical miles	300 nautical miles
Depth	60-120 fathoms (121-240 metres)	265-371 fathoms (530-742 metres)
Surrounding Sea-bed	40-46 fathoms (80-90 metres)	under 100 fathoms (200 metres)
Breadth	1-3 nautical miles	20-80 nautical miles

[3] *Limits in the Seas, op. cit.*, No. 87, 20 Aug. 1979, Annex II. (A copy of this agreement is attached as *Annex 93*.)

account of the Timor Trench in determining the boundary between their respective shelves[1].

6.49 Greater clarification has been brought to the issue by the Judgment of this Court in the *Tunisia/Libya* case. In that case Tunisia sought to rely on two submarine, geomorphological features — the "ridges" of Zira and Zuara — as a potential boundary line. The Court rejected this, saying:

> "As for the features relied on by Tunisia, the Court, while not accepting that the relative size and importance of these features can be reduced to such insubstantial proportions as counsel for Libya suggest, is unable to find that any of them involve such a marked disruption or discontinuance of the sea-bed as to constitute an indisputable indication of the limits of two separate continental shelves, or two separate natural prolongations[2]."

However, the Court went on to say:

> "The only feature of any substantial relevance is the Tripolitanian Furrow; but that submarine valley does not display any really marked relief until it has run considerably further to the east than the area relevant to the delimitation[2]."

The nature of this feature has been discussed in Chapter 3 above and in Part I of the *Technical Annex*.

6.50 Although in this context the Court expressed the caveat that "[i]t would be a mistake to suppose that it will in all cases, or even in the majority of them, be possible or appropriate to establish that the natural prolongation of one State extends, in relation to the natural prolongation of another State, just so far and no farther, so that the two prolongations meet along an easily defined line[3]", and although the cases so far brought before the Court were not such as to offer an approach to delimitation along these lines, the Court has recognised that there may be cases where, in the light of the geological circumstances, disruptions or discontinuances of the sea-bed could be so well marked and identified as to justify a delimitation based on such features. A delimitation which can be based on a clearly identifiable distinction between the natural prolongations of the States concerned may well satisfy the rule of applying equitable principles because it is essentially the natural prolongation of the respective land territories which confers title to the submarine area in front of the coast provided that a boundary so constructed does not on its face lead to an obviously inequitable result.

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[1] See *Australian Year Book of International Law 1970-1973*, 1975, pp. 145-146. (A copy of these pages is attached as *Annex 94*.) The Timor Trough is, of course, a very pronounced feature running parallel to the coasts of Timor and Australia for some 430 nautical miles in length, with a width of 30 nautical miles (at the 2,000 metre isobath) and reaching depths of over 3,000 metres or 1,641 fathoms, so that it is much deeper than the Norwegian Trough at 371 fathoms (740 metres). Other examples of sea-bed features that might be noted in this context are the Okinawa Trough between the Japanese Ryuku Islands and the East China Sea — 100 nautical miles across — 2,200 metres deep — (see "Continental Shelf Development" in *Japan Quarterly*, Vol. 24, 1977, pp. 394-397 at pp. 394-395; a copy of these pages is attached as *Annex 95*) and the Palaman Trough between the Philippines and the South China Sea — 3,000 metres deep.

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 57, para 66. The Court went on to note that "so substantial a feature" as the Hurd Deep was not given such a significance in the *Anglo-French Arbitration*.

[3] *Ibid.*, p. 47, para. 44.

6.51 In its 1982 Judgment the Court indicated that a delimitation based solely on identification of the natural prolongation of the respective land territories of the parties concerned is not to be deemed equitable *per se* under all circumstances[1]. There may be other relevant factors which, under the particular circumstances of the geographical or other situation, provide cogent reasons for disregarding such discontinuities in the natural prolongation partly or even totally in order to achieve an equitable result. Such considerations may have motivated the parties in the United Kingdom/Norway Agreement of 10 March 1965 on the delimitation of their respective continental shelves[2] to disregard the Norwegian Trough; otherwise the United Kingdom would have acquired a grossly disproportionate share of the continental shelf of the North Sea between the two States if the boundary line had followed the Norwegian Trough which runs close to the Norwegian Coast.

6.52 Even if a feature does not constitute so marked a disruption or discontinuance of the natural prolongation as to make it possible to identify a clear division between two distinct natural prolongations, it may nevertheless remain a relevant circumstance. In this context, reference may be made to the following passages in the Court's 1982 Judgment:

> "Since the Court is here dealing only with the question of geomorphological features from the viewpoint of their relevance to determine the division between the natural prolongations of the two States, and not with regard to their more general significance as potentially relevant circumstances affecting for other reasons the course of the delimitation, its conclusion can be briefly expressed[3]."
>
> "The conclusion that the physical structure of the sea-bed of the Pelagian Block as the natural prolongation common to both Parties does not contain any element which interrupts the continuity of the continental shelf does not necessarily exclude the possibility that certain geomorphological configurations of the sea-bed, which do not amount to such an interruption of the natural prolongation of one Party with regard to that of the other, may be taken into account for the delimitation, as relevant circumstances character-

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 47, para. 44.

[2] *Limits in the Seas, op. cit.*, No. 10—Revised, 14 June 1974, pp. 2-4. (A copy of these pages is attached as *Annex 92*.)

[3] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 57, para. 66

> izing the area, as indicated in this case in Article 1, paragraph 1, of the Special Agreement. In such a situation, however, the physical factor constituting the natural prolongation is not taken as a legal title, but as one of several circumstances considered to be the elements of an equitable solution[1]."

6.53 Thus a feature, which is not sufficiently substantial as to divide two distinct natural prolongations, may continue to have significance as a relevant circumstance. In that case, it may be surmised, the geomorphological feature would be one of several circumstances which characterise the area and its relative weight in affecting the actual course of the boundary will, as suggested above, be determined by reference to the criterion of the equitable result. In short, its influence will vary according to how far it produces a result which is equitable, and what is equitable must, in turn, depend on all the relevant circumstances.

6.54 It will be shown later that the continental shelf area between Libya and Malta has geological and geomorphological features which permit the identification of a division between the natural prolongations emanating from the land territories of both[2], and that a boundary following this division is consistent with the requirements of equity.

(b) The case of converging or overlapping natural prolongations

6.55 In situations where there is a single, common shelf and where it is not possible to identify a division between the natural prolongations of the respective land territories of the coastal States concerned, natural prolongation may still provide a criterion for delimitation of the respective continental shelves. However, the geological and geomorphological factors must be considered with other factors, and it is appropriate to turn to coastal configurations, applying natural prolongation in what may be viewed as its geographical aspect.

6.56 The basic guideline for the application of the "natural prolongation" criterion in delimitation cases has been stated by the Court in its Judgment in the *North Sea* cases in the following way—

> "...delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other[3]".

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 58, para. 68.

[2] See Chapter 8 below.

[3] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 53, para. 101 (C) (1) [*dispositif*].

6.57 The Court logically deduced this principle from the recognition of natural prolongation as the basis for the coastal State's title to continental shelf rights over the submarine areas in front of its coast. The Court had occasion to note in its 1982 Judgment that in 1969 it "did not regard an equitable delimitation and a determination of the limits of 'natural prolongation' as synonymous, since in the operative clause of its Judgment ... it referred only to the delimitation being effected in such a way as to leave 'as much as possible' to each Party the shelf areas constituting its natural prolongation[1]". Thus, its application to concrete situations needs further elaboration in the light of the particular geological and geographical circumstances. In particular, it is necessary to ascertain in what direction and to what extent the natural prolongations of the States concerned converge or overlap with each other.

6.58 At first glance this determination may look complicated in delimitation cases between States with adjacent coasts but may look rather simple in delimitation cases between States with opposite coasts. The supporters of the view that in the latter case the median line offers the obvious and most equitable solution usually refer to the dictum of the Court in the *North Sea* cases, where it was said:

> "The continental shelf area off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved[2]."

But this dictum cannot be said to have universal applicability; it is to be noted that the Court recognised the need to avoid "disproportionally distorting effect[s]" caused, in that context, by "the presence of islets, rocks and minor coastal projections," and from this it can only be inferred that the Court would have viewed the disproportionally distorting effect caused by application of the median line as between two coastlines of very different lengths as no less requiring elimination.

6.59 In the *Anglo-French Arbitration*, the Court of Arbitration, in referring to the fact that the United Kingdom and France faced each other in the English Channel, stated the following:

> "Between opposite States, as this Court has stated in paragraph 95, a median line boundary will in normal circumstances leave broadly equal areas of continental shelf to each State and constitute a

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 46, para. 44.

[2] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 36, para. 57.

> delimitation in accordance with equitable principles. It follows that where the coastlines of two opposite States are themselves approximately equal in their relation to the continental shelf not only should the boundary in normal circumstances be the median line but the areas of shelf left to each Party on either side of the median line should be broadly equal or at least broadly comparable[1]."

However, in view of the presence of the Channel Islands, the Court could not follow this approach throughout the whole area within the Channel and had to couple the median line solution with an enclave for the Channel Islands. It is important to observe that this dictum refers only to "normal circumstances" and to cases of "approximately equal" opposite coasts which are of comparable length and configuration. In cases where there is a continuous, uninterrupted continental shelf area between comparable coasts, it is certainly plausible to come to the conclusion that the two prolongations meet and overlap to the same extent and that consequently the median line is the most equitable method of delimitation in such cases, absent other compelling circumstances. There are, however, many cases where the geographical situation is not as simple as that.

6.60 The presence of islands between two coasts is already one example of a more complicated geographical situation where the median line does not necessarily result in an equitable solution: hence the enclave solution for the Channel Islands. Another case which calls for special consideration is where one of the opposite coasts consists of a broad coastal front of a continent and the other possesses only a relatively small coastal front. It is difficult to perceive how the natural prolongations from two such different coasts could possibly be regarded as meeting and overlapping with comparable or even equal breadth and intensity so that the median line would offer the obvious solution. If, for example, one of two opposing coasts has a peninsula which is very small in breadth, but extends for a considerable distance towards the opposite coast, it would not seem equitable to accord the small coastal front of the peninsula the same weight as the broad opposite coast in generating a natural prolongation between them. The same is apparently the case where the small coast belongs to an island which lacks the backing of a broader coastal front behind. In both such cases the median line approach is inappropriate and inequitable, and other criteria must apply.

3. Geographic Factors

6.61 It is apparent, in considering geographic factors which influence a continental shelf delimitation, that it is the coasts of the States involved that must play the most important role. For the rights that vest in States over the continental shelf are those that belong exclusively to the coastal State, and it is by virtue of the fact that a State possesses a coast that it may exercise such rights. As the Court itself observed in its Judgment in the *Tunisia/Libya* case:

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[1] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 89, para. 182.

> "The geographic correlation between coast and submerged areas off the coast is the basis of the coastal State's legal title ... As has been explained in connection with the concept of natural prolongation, the coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it[1]."

6.62 While the coasts of the Parties have importance from the standpoint of title to continental shelf, their significance is not limited to questions of title alone. Both this Court, and the Court of Arbitration in 1977, recognised that the coastal configurations of the States involved were also of fundamental relevance to the question of delimitation between States with either opposite or adjacent coasts. In its Judgment in 1969, for example, the Court specified that, in the course of negotiations between the parties to the *North Sea* cases, one of the factors to be taken into account was to be "the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features[2]." The importance of coastal configurations was also emphasised in the *Tunisia/Libya* case where the Court treated the coasts as one of the relevant circumstances[3].

6.63 Of particular significance in the *North Sea* cases was the presence of concave or convex coastlines and the relationship between these coastlines and the method of delimitation to be applied as presented in the pleadings of the parties to the case. Islands, too, may present complicated questions with regard to the weight to be attached to the length and configuration of the coastline involved. On the one hand, islands — particularly if they are small — have by their very nature a coastline that is convex. On the other, seldom will the entire coast of an island be relevant to a single delimitation since parts of that coast will face maritime areas that are not at issue in that delimitation. The problem then becomes one of determining which are the relevant portions of coast to be taken into account[4].

6.64 The Court of Arbitration in the *Anglo-French Arbitration* was faced both with the question of promontories (as an exaggerated example of a convex coast) and the question of islands. In rendering its decision in that case, the Court of Arbitration had occasion to stress the significance of the coasts of the parties to delimitation. The Court remarked:

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 73.

[2] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 54, para. 101(D)(1) [*dispositif*].

[3] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 93, para. 133(B)(2) [*dispositif*].

[4] The question of relevant coasts in this case will be taken up in Chapter 10 below, where the element of proportionality is discussed.

> "A State's continental shelf, being the natural prolongation under the sea of its territory, must in large measure reflect the configuration of its coasts. Similarly, when two 'opposite' or 'adjacent' States abut on the same continental shelf, their continental shelf boundary must in large measure reflect the respective configurations of their two coasts[1]."

6.65 The notion that there should be a correlation between the configuration of the respective coasts and the shelf that appertains to those coasts does not mean that two coasts are to be treated differently for purposes of delimitation. That more shelf should, in general, appertain to a longer coastline than to a shorter one is not a difference in "treatment" of the two coasts. Indeed, the respective coastlines considered relevant for the delimitation must be subject to the same tests of relevance and must be examined, for purposes of determining the extent to which they constitute relevant factors, in light of the same criteria. It was to this notion of "equality of treatment" that the Court referred in its 1969 Judgment when it said:

> "Equity does not necessarily imply equality. There can never be any question of completely refashioning nature, and equity does not require that a State without access to the sea should be alloted an area of continental shelf, any more than there could be a question of rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline[2]."

Similarly, the Court of Arbitration noted in its 1977 Award:

> "Just as it is not the function of equity in the delimitation of the continental shelf completely to refashion geography, so it is also not the function of equity to create a situation of complete equity where nature and geography have established an inequity. Equity does not, therefore, call for coasts, the relation of which to the continental shelf is not equal, to be treated as having completely equal effects[3]."

6.66 It is evident, therefore, that the application of equitable principles does not require Courts to assume equality where equality does not in fact exist. The principle of equity cannot confer territorial waters on a State with no coast, or grant rights to the use of waters in rivers which do not flow through its territory, or confer rights to large areas of continental shelf on States with very limited coastlines. The Courts take geography, or geology, as they find it and do not seek to accord equal areas of shelf to States which, territorially, are not equal; a State's territory, its location, size and coastline is what it is — large or small. Thus, factors which are legally relevant to entitlement in matters of shelf delimitation — size, location, configuration of coastline, and so forth, must be taken as they are and given due weight in order to achieve an equitable result. To do otherwise would invite the Court to adopt the very concept of the "just and equitable share" which it has already emphatically, and rightly, rejected[1].

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[1] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 60, para. 100.

[2] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, pp. 49-50, para. 91.

[3] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 116, para. 249.

6.67 Quite clearly, there are other aspects of geography that have a bearing on delimitation besides the coasts and landmasses of the Parties. These include factors related to delimitations with third States and to the element of proportionality. Each of these factors will be taken up in more detail in the following paragraphs of this Chapter.

4. Other Relevant Factors

6.68 The preceding sections have dealt with the relevant circumstances of a geological, geomorphological and geographical nature in their juridical sense; for such circumstances relate directly to the concept of natural prolongation. There may well be other relevant factors. As the Court said in its 1969 Judgment:

> "In fact, there is no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures, and more often than not it is the balancing-up of all such considerations that will produce this result rather than reliance on one to the exclusion of all others. The problem of the relative weight to be accorded to different considerations naturally varies with the circumstances of the case[2]."

6.69 The identification of those factors relevant in the present case is dealt with in the following Part of this Memorial. The purpose of the present section is to suggest the criteria which might properly provide guidance in weighing the relative weight of the various factors or circumstances.

(a) Conduct of the Parties

6.70 The conduct of the Parties is, in principle, a relevant circumstance. Yet it is not all conduct which is relevant. Relevant conduct may be such as carries an inference that the Parties deemed a particular line of delimitation to be equitable. Or it may be conduct which indicates areas which the Parties regard as the areas in dispute. Although in some cases the conduct may reflect a common position, consciously adopted, in other cases it may be conduct by one Party only which reflects the extent of its claims, or the basis for its claims, or even conduct which implies that a particular method of delimitation is equitable. The mere silence or lack of protest by one Party will not constitute "conduct" for this purpose[1]. In any event, whatever inference the conduct may give rise to, it will be for the Court to assess its effect or probative value, and this, according to the circumstances, may range from a true estoppel to a simple inconsistency of position.

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[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 22, para. 19.

[2] *Ibid.*, p. 50, para. 93.

6.71 The positions adopted by the Parties during negotiations may be relevant in cases where they reveal a common position, accepted by both sides as a reasonable basis for securing an equitable result, even though never formally implemented in an agreement. The negotiations would then be "indicia ... of the line or lines which the Parties themselves may have considered equitable or acted upon as such...[2]". Where, however, negotiations reveal no common position, they may still reveal the different positions of the Parties and to that extent may afford a basis upon which, simply in terms of consistency of position, their conduct may be judged.

6.72 The grant of concessions needs to be viewed with some caution, for the promulgation of areas subject to license or the actual grants of concessions within those areas may be simply another form of promoting a claim, and it may be an extreme claim. Thus, conflicting or overlapping concession areas may denote very little except, perhaps, the limits to which a particular State felt it desirable to award concessions. Yet even here there are many factors which influence the determination of concession areas — available seismic data, policies on control of production, cost-effectiveness related to oil prices, etc. — which are not necessarily true indicators of an equitable delimitation of a State's continental shelf, which may also contain large areas with no resources to exploit. However, where, as in the *Tunisia/Libya* case[3], both parties have accepted a common boundary for their respective concession grants (in that case, the 26° line), producing a *de facto* line of delimitation, then, although not a tacit agreement, there is conduct which is indicative of a common view of an equitable result.

6.73 Finally, the unilateral conduct of a State via its own legislation may also be of considerable legal significance in so far as it may express the State's own view of the extent of its continental shelf. As will be demonstrated later in this Memorial[4], Malta's own legislation on the continental shelf indicated both Malta's views as to the limits of its shelf and Malta's views on the method of delimitation to be followed in reaching agreement with neighbouring States.

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[1] See *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 70-71, paras. 94-95 for the Court's comment on the silence of the French authorities in the face of the Italian "buffer zone" established in 1919. The Court nevertheless observed that the tacit *modus vivendi* had some relevance to the method of delimitation since it excluded Tunisian pretensions to historic fishing rights east of the *modus vivendi* line.

[2] *Ibid.*, p. 84, para. 118.

[3] *Ibid.*, pp. 83-84, paras. 117-118.

[4] See Section C of Chapter 9 below.

(b) Delimitations with third States

6.74 From the outset, in its 1969 Judgment, the Court identified as a factor or circumstance which must be taken into account "the effects, actual or prospective, of any other continental shelf delimitations between adjacent States in the same region[1]". It will be recalled that the Court's identification of this relevant factor was in the context of the proportionality test. It is also apparent from the Court's 1982 Judgment that the application of the proportionality test may require the consideration of areas outside the area relevant to the delimitation in question[2].

6.75 Therefore, three delimitation situations will have to be borne in mind in the present case: (Tunisia/Italy 1971; Italy/Greece 1977; and the 1982 Judgment in the *Tunisia/Libya* case)[3]. Whilst they are not necessarily binding on both Parties in the present case, they denote the views of other States as to their own areas of natural prolongation, the relationship of their own coasts to those of the others, and, inevitably, they have some bearing on the reasonableness or equitableness of the positions being adopted by the Parties in the present case. As will be demonstrated later in Chapter 9 of this Memorial, the Maltese claim appears to reject, in part, the 1971 Italian/Tunisian Agreement; it postulates a situation of adjacency with Italy and oppositeness with Greece which is tantamount to excluding virtually all of the Libyan coast from any opposite relationship with Italy; and it involves a potential conflict with the Tunisia/Libya line that should follow from the Court's 1982 Judgment. The Court will, in this case, be bound to have regard to these other delimitation situations.

6.76 The complexity of these relationships stems from the character of the Mediterranean Sea as a narrow sea, containing many coastal States and islands. Thus, delimitation will in many cases involve consideration of boundaries with third States. In the present case, in addition to the two existing boundaries already referred to, there are prospective delimitations such as Malta-Italy, Libya-Italy and Libya-Greece. It will not be the wish of the Court to prejudge such future delimitations for they form an important part of the problem as a whole. Any solution which would produce an inequitable result for any future delimitation would surely be inappropriate.

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[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 54, para. 101(D)(3) [*dispositif*].

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 53, para. 75.

[3] For consideration of the effects of these delimitation situations, see Section D of Chapter 9 below.

(c) Security interests

6.77 It is undeniable that one of the motivations for the Truman Proclamation in 1945 related to security: the idea that it was not tolerable to have a foreign State or its licensees exploiting resources off one's own coasts. Some element of a concern for security was reflected in France's pleadings with respect to the Channel Islands sector during the *Anglo-French Arbitration*, in which France expressed concern over the risks to French submarines based on Cherbourg and to the navigational routes for merchant vessels serving French ports [1]. The Court of Arbitration, however, found the weight of such arguments diminished due to the fact that the navigational routes served international maritime navigation, not just French, and found that such arguments "may support and strengthen, but they cannot negative, any conclusions that are already indicated by the geographical, political and legal circumstances of the region...[2]".

6.78 Security is, of course, a concern of both Parties to this case. The maritime areas lying north of the Libyan coast where its principal cities and centres of population lie—as well as its main centres of oil activity—have an obvious significance from the standpoint of Libya's security. Malta's main security interests appear to lie to the north of the Maltese Islands. The major Central Mediterranean shipping routes lie to the north of Malta, save for those roughly north/south routes between Libya and European ports. Indeed, Malta's ports and centres of population lie on the north coast, away from the area relevant in this case. Nevertheless, at this stage, it is not necessary to discuss the factor of security further.

(d) Islands

6.79 The 1958 Conventions, and even more so the new Convention on the Law of the Sea, have adopted certain rules of particular application to islands. This was the case with the rule on straight baselines (Article 4 of the 1958 Convention on the Territorial Sea and Contiguous Zone); with the newer rules on archipelagic States (Part IV of the new Convention); and with the rules on artificial islands (Articles 60 and 80 of the new Convention). Yet not only did these rules create no special status for islands as such, they had nothing to do with either entitlement to continental shelf or delimitation of the continental shelf.

6.80 The terms of Article 1 of the 1958 Convention defined the continental shelf in subsections (a) and (b), the first applying to "the coast" and the second to the "the coasts of islands", in such a manner as to make it abundantly clear that island territories were to be treated exactly like other land territories in that both were in principle entitled to a continental shelf. Yet entitlement had to be distinguished from delimitation. As shall be seen, in applying the 1958 Convention, the Court of Arbitration in the *Anglo-French Arbitration* had no doubt about the entitlement of the Channel Islands to a continental shelf, but for purposes of achieving an equitable delimitation regarded a 12-mile enclave as the proper solution.

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[1] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 81, para. 161. It may be noted that the French argument was partly to counter the United Kingdom argument that security considerations dictated a continental shelf for the islands continuous with that of the United Kingdom.

[2] *Ibid.*, p. 91, para. 188.

6.81 This approach has been maintained in the new Convention on the Law of the Sea. Early attempts to introduce special rules applicable to both the entitlement of islands[1] and the delimitation of their maritime spaces[2] failed to find the support necessary for inclusion in the negotiating text. Indeed, following the Caracas Conference little more was heard of these ventures, and by the third session the text of Article 132 was established[3], retaining its essential content to become Article 121 which in its final form provides the following:

> "1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
>
> 2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
>
> 3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf[4]."

6.82 Apart from the specific exclusion of mere rocks in the third paragraph, it is clear that, as regards both entitlement to and delimitation of the continental shelf, islands are to be treated like any other land territory: they have no special status.

6.83 The question of the extent to which continental shelf rights may be claimed around islands, on the basis of a natural prolongation of their territories into and under the sea, has been and still is a complex and controversial issue. The Court has not yet had an opportunity to pronounce itself on this issue, in particular with respect to the situation of an island within a narrow sea enclosed on all sides by continental coasts as in the Mediterranean Sea. While it will not be disputed that an island, regardless of size, may have a continental shelf around its coast, and that the legal concept of the continental shelf as it has developed in general international law applies to an island no less than to a continental coast, it does not follow therefrom that an island, regardless of its size and the smallness of its coastline, may have the same area of continental shelf as a broad continental coastal front. If an island may, as in the case of any other territory, have a continental shelf to the extent that a natural prolongation of its land territory into and under the sea can be identified, it is always subject to the paramount principle that delimitation of its continental shelf vis-à-vis other territories has to be in accordance with equitable principles, under which the location and size of the island, and the length of its coastline, will always remain relevant factors. The consequences which must be drawn in such situations will be discussed later under the headings of relevant circumstances and proportionality.

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[1] See, for example, the Maltese proposal (U.N. Doc. A/AC.138/SC. II/L.28) that Island States and Archipelagic States should have a 200 mile zone of "ocean space": *Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction*, Vol. III, General Assembly, *Official Records: 28th Session*, Supp. No. 21 (A/9021), p. 41. (A copy of this page is attached as *Annex 96*.)

[2] See, for example, the 14-Power proposal, (U.N. Doc. A/CONF.62/C.2/L.62/Rev.1), Third United Nations Conference on the Law of the Sea, *Official Records*, Vol. III, pp. 232-233, setting out special rules for determining the maritime spaces of islands and excluding from these rules both Island States and Archipelagic States. (A copy of these pages is attached as *Annex 97*.)

[3] See U.N. Doc. A/CONF.62/WP.8/Part II, *ibid.*, Vol. IV, pp. 170-171. (A copy of these pages is attached as *Annex 98*.)

[4] U.N. Doc. A/CONF.62/122, p. 48. (A copy of this page is attached as *Annex 99*.)

6.84 In the *Anglo-French Arbitration* the Court had to deal with the British Channel Islands which were situated a few miles off the French coast. In that case the Court rejected the extreme legal positions of both sides. The Court rejected the French argument that in such situations an island could not rely on any natural prolongation at all and could claim only a belt of territorial waters around its coast; the Court also rejected, however, the contrary United Kingdom position that the natural prolongation of the island's territory may cut off completely the natural prolongation of the continental coast seaward from the island. In the case of the Channel Islands, the Court solved the problem by adopting the concept that in such situations the reliance on natural prolongation could not be considered as absolute, but that the fact of the islands being situated on the sea-bed which would otherwise be the natural prolongation of the continental State constituted a "special circumstance" which called for a special solution in accordance with equitable principles:

> "The true position, in the opinion of the Court, is that the principle of natural prolongation of territory is neither to be set aside nor treated as absolute in a case where islands belonging to one State are situated on continental shelf which would otherwise constitute a natural prolongation of the territory of another State. The application of that principle in such a case, as in other cases concerning the delimitation of the continental shelf, has to be appreciated in the light of all the relevant geographical and other circumstances. When the question is whether areas of continental shelf, which geologically may be considered a natural prolongation

> of the territories of two States, appertain to one State rather than to the other, the legal rules constituting the juridical concept of the continental shelf take over and determine the question. Consequently, in these cases the effect to be given to the principle of natural prolongation of the coastal State's land territory is always dependent not only on the particular geographical and other circumstances but also on any relevant considerations of law and equity[1]."

In the result, the Channel Islands were only accorded a twelve-mile zone of continental shelf in the form of an enclave beyond which the French continental shelf continued to the median line between the mainland coasts of both France and the United Kingdom.

6.85 It is certainly possible to criticise the method by which the Court of Arbitration completely avoided a determination of the natural prolongation of the islands in spite of its fundamental character. Nor is it warranted to regard the twelve-mile enclave as a valid precedent for other geographical situations, since the Court of Arbitration had made it clear that this solution was influenced to a great extent by the narrowness of the continental shelf area in the Channel. Without wishing to challenge the equitableness of the result in the case of the Channel Islands, another method of dealing with such situations may be more appropriate given the importance of natural prolongation as the basis for continental shelf entitlement. It will depend on the facts of each case whether such a determination of the outer limit of the island's natural prolongation will provide in itself an equitable solution, or whether other factors have to be taken into consideration in order to reach an equitable result.

6.86 In the case of Malta, it will be necessary to determine the extent to which the submarine areas around Malta may reasonably be considered as continuing Malta's land territory into and under the sea where they meet the natural prolongation of the continental landmasses of other States around Malta. It will then have to be considered whether a delimitation of the continental shelf of Malta on this basis achieves an equitable result in view of its size and any other relevant factors.

(e) Economic and related factors

6.87 The Court has very properly warned against the temptation to base shelf delimitation on arguments of relative wealth, saying—

> "... these economic considerations cannot be taken into account for the delimitation of the continental shelf areas appertaining to each Party. They are virtually extraneous factors since they are variables which unpredictable national fortune or calamity, as the case

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[1] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 93, para. 194.

> may be, might at any time cause to tilt the scale one way or the other. A country might be poor today and become rich tomorrow...[1]".

6.88 It may be suggested that the irrelevance of such arguments derives not only from the relative and variable nature of national wealth but also from the fact that such considerations have nothing whatever to do with the physical facts of prolongation of the land territory into and under the sea and the geographic correlation between landmass and seabed which is the basis of title[2].

6.89 Arguments based on population are equally extraneous[3], for the relative density of a population may be explained on various grounds — climate, soil fertility, actual resources of the land, wealth, communications — but not by reference to any inherent link between the land and the seabed. Indeed, to shift the argument from one of national wealth to one of population is not really to shift the argument at all. The size of population is directly related to national wealth, for its most relevant criterion is *per capita* income, and that depends upon the size of population.

C. The Role of Proportionality

6.90 The principle that an equitable delimitation must satisfy the test of proportionality means that there ought to be a "reasonable degree of proportionality which a delimitation effected according to equitable principles ought to bring about between the extent of the continental shelf appertaining to the States concerned and the lengths of their respective coastlines, — these being measured according to their general direction...[4]". Indeed, in its 1982 Judgment the Court referred to "the test of proportionality as an aspect of equity[5]", and the manifest link between the equity of the result and the test of proportionality was earlier recognised by the Court of Arbitration in the *Anglo-French Arbitration* when it said:

> "Proportionality...is to be used as a criterion or factor relevant in evaluating the equities of certain geographical situations, not as a general principle providing an independent source of rights to areas of continental shelf[6]."

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 77, para. 107.

[2] *Ibid.*, p. 54, para. 62 and p. 61, para. 73.

[3] This may not be true of disputes concerning fishing limits, where the economic dependence of a coastal population is a relevant factor; but it is true of disputes concerning the continental shelf.

[4] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 52, para. 98.

[5] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 91, para. 131.

[6] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 61, para. 101.

Although not a legal principle which itself gives rise to rights, proportionality as a factor or guide is intimately connected with the concept of the continental shelf based on natural prolongation; it may even be said that it is the necessary logical consequence of this concept, since its purpose is to ensure that each natural prolongation will be accorded its proportionate weight.

6.91 Put in other terms, it is the role of the proportionality test to prevent any "refashioning" of geography. For the proportionality test requires that the real or actual coasts of the Parties are first to be identified, and then related to the shelf area lying off those coasts which any particular method of delimitation would attach to those coasts as their "natural prolongation". And the purpose of identifying a "coastal front" rather than the actual configuration is not to ignore nature or depart from the real coasts, but rather to obtain a more realistic measurement of the coastal length which projects into and under the sea. It is for this reason that the "distortions" produced by concavities or convexities or other abnormal configurations are eliminated by measuring coastal fronts, and the effect which such features might have on any line of delimitation is controlled by the proportionality factor to ensure an equitable result. Consistent with this approach, the equity of the result does not flow from "nice calculations" or precise, mathematical relationships between coastal lengths and shelf areas, but rather from a broad, general comparison of sufficient flexibility to accommodate the overriding aim of achieving an equitable result[1].

6.92 The test or element of proportionality as an aspect of equity has in fact been applied so far only to those geographical situations where two or more "opposite" or "adjacent" States abut on the same continental shelf in such a way that their respective natural prolongations overlap, converge or merge into each other although, in Libya's view, the application of the principle of proportionality is certainly not restricted to those geographical situations, but, as a test of the equity of the delimitation, has a much more general scope. In the *North Sea* cases and in the *Tunisia/Libya* case the Court applied the principle of proportionality to geographical situations where there was an extensive overlap of the natural prolongations of the coastal States which bordered an enclosed, single and uniform continental shelf. It was only in the *Anglo-French Arbitration*, in relation to areas stretching out open-ended into the Atlantic, that the Court of Arbitration had doubts about the applicability of proportionality in this strict sense.

6.93 It is precisely in areas where the natural prolongations of two or more States merge or converge with one another, within an enclosed submarine area, that the test of proportionality ensures that proportionate weight will be accorded to the prolongations of the respective coastal fronts. In 1969 it was the particular geographical situation of the three adjacent States situated on the concave coast of the North Sea which first gave rise to the test of proportionality. But it does not follow that its applicability is restricted to such geographical situations. This Court, as well as the Court of Arbitration in the *Anglo-French Arbitration*, has in later cases stressed the point that the role of proportionality is "fundamental" and indeed "inherent" in the notion of delimitation in accordance with equitable principles, and it could well apply to other geographical situations where the natural prolongations of the States concerned overlap, merge or converge. In the case of opposite coasts abutting on the same continental shelf the following considerations may then be relevant:

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[1] See *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 91, para. 131, where the Court applied the ratios in a general way, without attempting to produce precise mathematical ratios between coasts and shelf areas.

> (1) Where opposite coasts, whether continental or insular, are of comparable length and configuration with respect to that part which faces the submarine areas between them, the median line between the two coasts will in general satisfy the test of proportionality. In such cases the median line will attribute to each of the States concerned continental shelf areas which are on the whole proportionate to the length of their respective coastal fronts[1].
>
> (2) Where, however, the opposing coasts lack comparability in length and, where, in particular, a much smaller island faces a much larger continental coast, the median or equidistance line would not satisfy the test of proportionality. It would attribute large submarine areas to an island when, in reality, the areas are part of the natural prolongation of the continental coast. In such cases, therefore, a boundary line must be sought which divides the area where the natural prolongations overlap in a ratio comparable to the ratio of the length of the respective coastal lengths which face the submarine area to be delimited. The manner in which this test may be applied to the present case will be demonstrated in Part III below.

Conclusions

6.94 In the next Part, the principles and rules of law discussed in this Chapter are applied to the facts and relevant circumstances of this case. But before turning to Part III, it may be helpful to summarise the present Chapter briefly. It has been shown above that the principle of natural prolongation remains the basis of title to the continental shelf and that this principle has a "double aspect": as the basis of title and as a relevant circumstance to be taken into account in effecting an equitable delimitation. At the same time, it has been emphasised that the governing principle in reaching a delimitation by agreement between the Parties is to reach an equitable result through the application of equitable principles, which involves the selection and weighing of the factors and circumstances relevant in this particular case. It is appropriate, therefore, to turn now to this aspect of the case in which the application of the law to the facts and relevant circumstances will be taken up.

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[1] See paras. 6.58 and 6.59 above.

PART III

APPLICATION OF THE LAW TO THE FACTS AND RELEVANT CIRCUMSTANCES OF THIS CASE

CHAPTER 7

THERE IS NO *A PRIORI* METHOD OF DELIMITATION

7.01 In this Chapter it will be shown that under customary international law there is no *a priori* method for the delimitation of the continental shelf. The objective is to determine how in the light of the relevant circumstances of the particular case an equitable result may be achieved.

7.02 In its 1969 Judgment the Court noted that there is no single method of delimitation which is in all circumstances obligatory[1]. Clearly the reasoning behind that conclusion lay in the Court's recognition that, in order to arrive at an equitable result, *all* the relevant circumstances must be taken into account, and that, moreover, even the geographical circumstances — the coastal configurations of the Parties — could demonstrate such variety that no single method could be applied and produce an equitable result in all situations.

7.03 This reasoning was maintained by the Court in its 1982 Judgment in the *Tunisia/Libya* case. There the Court noted, and by clear inference accepted, the view of both parties that no method was imposed by law, and that even a combination of methods might have to be used.

> "The Parties recognize that in international law there is no single obligatory method of delimitation and that several methods may be applied to one and the same delimitation[2]."

7.04 In fact, in its 1982 Judgment the Court adopted two different methods in the two different sectors. The Court found that the relevant area did not exhibit such "geographical homogeneity[3]" as would justify a single method of delimitation throughout the area. As the Court noted:

> "The considerations which dictate this difference of treatment of the two sectors of continental shelf for the purposes of delimitation are intimately related to the varying influences of the individual circumstances characterizing the area...[4]".

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[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 53, para. 101(B) [*dispositif*].

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 79, para. 111.

[3] *Ibid.*, p. 82, para. 114. It may be noted that the Court of Arbitration in the *Anglo-French Arbitration* adopted similar reasoning in construing Article 6 of the 1958 Convention. For the two sectors of the Channel Islands and the Atlantic were viewed by the Court as geographically very different, and the Court chose different methods of delimitation to produce an equitable result: in the first sector an enclave, and in the second sector "half-effect" for the Scilly Isles.

[4] *Ibid.*, p. 82, para. 115.

Accordingly, the area close to the coasts was treated differently from the area further to seaward. Thus, flexibility of method for the purposes of a single delimitation was recognised as necessary for achieving an equitable result wherever the geographical or other relevant circumstances showed marked variation within the area relevant to that single delimitation.

7.05 The notion that equitable principles demand flexibility of method necessarily has implications for the status of the "equidistance principle". The view that the equidistance method has an obligatory character has been shown to be mistaken even under the 1958 Convention on the Continental Shelf. In its 1969 Judgment, for example, the Court had occasion to refer to the history of Article 6 of the 1958 Convention in order to see what status the International Law Commission had attached to the equidistance method. The Court said—

> "... a striking feature of the Commission's discussions ... during the early and middle stages, [was that] not only was the notion of equidistance never considered from the standpoint of its having *a priori* a character of inherent necessity: it was never given any special prominence at all, and certainly no priority[1]."

The Court concluded:

> "In the light of this history, and of the record generally, it is clear that at no time was the notion of equidistance as an inherent necessity of continental shelf doctrine entertained[2]."

7.06 The view that equidistance has no *a priori* claim as a method, and that no one method is ever obligatory, found support in the 1977 Award by the Court of Arbitration in the *Anglo-French Arbitration*. In construing Article 6 of the 1958 Convention, the Court of Arbitration stated—

> "...this Court considers that the appropriateness of the equidistance method or any other method for the purpose of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case. The choice of the method or methods of delimitation in any given case, whether under the 1958 Convention or customary law, has therefore to be determined in the light of those circumstances and of the fundamental norm that the delimitation must be in accordance with equitable principles[3]."

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[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 34, para. 50.

[2] *Ibid.*, p. 35, para. 55.

[3] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), pp. 59-60, para. 97. The Court had earlier noted that "...even under Article 6 it is the geographical and other circumstances of any given case which indicate and justify the use of the equidistance method as the means of achieving an equitable solution rather than the inherent quality of the method as a legal norm of delimitation". *Ibid.*, p. 49, para. 70.

7.07 This clear trend of decision was maintained by this Court in its Judgment in the *Tunisia/Libya* case. There the Court found it appropriate to make some observations on the equidistance method. The Court stated:

> "Treaty practice, as well as the history of Article 83 of the draft convention on the Law of the Sea, leads to the conclusion that equidistance may be applied if it leads to an equitable solution; if not, other methods should be employed[1]."

Indeed, the Court was not even inclined (as had been the Court of Arbitration in 1977) to make the equidistance method a first step or starting point. It said:

> "Nor does the Court consider that it is in the present case required, as a first step, to examine the effects of a delimitation by application of the equidistance method, and to reject that method in favour of some other only if it considers the results of an equidistance line to be inequitable. A finding by the Court in favour of a delimitation by an equidistance line could only be based on considerations derived from an evaluation and balancing up of all relevant circumstances, since equidistance is not, in the view of the Court, either a mandatory legal principle, or a method having some privileged status in relation to other methods[2]."

7.08 The judicial appraisal of the role of equidistance, as reflected in these decisions, was mirrored in the negotiations at the Third United Nations Conference on the Law of the Sea. The evolution of the successive drafts of the Convention witnessed the abandonment of the provisions for delimitation that had appeared in Article 6 of the 1958 Convention[3] in favour of incorporating the principles that were expressed by this Court, most notably, in its 1969 Judgment. Whereas Article 6 of the 1958 Convention had provided for delimitation by the equidistance method "unless another boundary line is justified by special circumstances", Article 70 of the Informal Single Negotiating Text presented by the Chairman of the Second Committee of the Third Conference in 1975 reversed the role of equidistance by providing that delimitation be effected by agreement "in accordance with equitable principles, employing, where appropriate, the median or equidistance line, and taking account of all the relevant circumstances[1]."

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 79, para. 109.

[2] *Ibid.*, p. 79, para. 110.

[3] For the convenience of the Court, a copy of this Article, as well as of the various drafts of the article dealing with the delimitation of the continental shelf which were discussed during the Third Conference on the Law of the Sea and which are referred to in paras. 7.08-7.10 of this *Memorial*, have been attached as *Annex 100*.

7.09 The provisions of Article 70 remained the same throughout the 1976, 1977 and 1979 revisions until the Informal Composite Negotiating Text/Revision 2 of 11 April 1980 when two changes were incorporated into Article 83 which, by that time, had become the article dealing with the delimitation of the continental shelf. First, Article 83 was amended to provide that delimitation be effected by agreement "in conformity with international law". Second, the expression "taking account of all the relevant circumstances" was changed to read "taking account of all circumstances prevailing in the area concerned[2]". Article 83 took its final shape in the Draft Convention of 28 August 1981 in which all references to equidistance were entirely eliminated in favour of the following provision:

> "1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution[3]."

Ultimately this formula was adopted in the final version of the Convention that was opened for signature on 10 December 1982[4].

7.10 The shift of emphasis evidenced by the successive drafts of the new Convention lay not merely in the elimination of any specific reference to equidistance. More important was the emphasis that was placed on the ultimate solution and on the equity of the result achieved. The earlier drafts of the Convention provided that delimitation was to be effected by agreement "in accordance with equitable principles". In the final version of Article 83 quoted just above, the stress was placed on the achievement of an "equitable solution". In contrast, the 1958 Convention had made no express mention of equitable principles or the achievement of an equitable solution.

7.11 The primary reason, of course, why equidistance has no *a priori* or mandatory character is that the equidistance method, by its very nature, is not designed to take into account all of the circumstances that may be relevant to the delimitation. It is self-evident that the only factors which are relevant to equidistance are geographical, since equidistance depends entirely on the relationship of the two coasts between which the line is drawn and, in some cases, on only one point on the coast. This method, which is purely cartographic, rejects all other potentially relevant circumstances — geomorphology, geology, physical appurtenance of shelf to landmass, conduct of the parties, effect of delimitations with third States and the element of proportionality — which must be set aside as legally irrelevant. Indeed, equidistance does not even accurately reflect geography in all cases inasmuch as the effect of islands, convex and concave coastlines or promontories may well distort the course of an equidistance line.

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[1] Third United Nations Conference on the Law of the Sea, U.N. Doc. A/CONF. 62/WP. 8/PART II, 7 May 1975.

[2] *Idem*, U.N. Doc. A/CONF. 62/WP.10/Rev.3, 22 Sep. 1980.

[3] *Idem*, U.N. Doc. A/CONF. 62/L.78, 28 Aug. 1981.

[4] *Idem*, U.N. Doc. A/CONF. 62/122, 7 Oct. 1982.

7.12 The notion that flexibility of method is required to accommodate the variety of geographical and other relevant circumstances is fully consistent with State practice. Although it is true that agreements between States are not normally accompanied by a description of the reasoning behind the selection of a particular method of delimitation in the same way as in a judicial decision, nevertheless it is apparent from the geographical context that in many agreements some consideration was given to other methods in delimiting the maritime areas concerned. Such methods reflected in these agreements include: modifying an equidistance line to give partial effect to islands; the use of partial or complete enclaves; lines reflecting an allocation of areas of sea-bed in proportion to respective coastal lengths; lines at right angles to a general line of coastal fronts; lines adopting a line of latitude or a fixed azimuth; and lines following a shipping route or channel.

7.13 The diversity of methods used is a direct reflection of the diversity of relevant circumstances. Both this Court and the Court of Arbitration in 1977 have emphasised that the appropriateness of any given method must depend upon the relevant circumstances of the particular case[1]. It is therefore essential to identify those circumstances which are relevant in the present case. The task of identifying the relevant circumstances of the case is, in part, a task involving the application of legal principles already established by this Court, bearing in mind the caveat of the Court that there are no closed categories of relevant circumstances, and there is "no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures[2]".

7.14 However, the more difficult task lies not in simply identifying the relevant factors or circumstances but in attaching to each of them their appropriate weight. For it is in the process of balancing or weighing one factor against another that the element of judgment is most crucial and, inevitably, the question arises as to the criterion by which this judgment must be exercised. It is clear, in Libya's view, that the criterion must be the equity of the result. To adopt the Court's own phrase:

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[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 47, para. 85(b) and p. 53, para. 101 (C)(1)[*dispositif*]; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 60-61, para. 72; p. 78, para. 108; p. 82, para. 114; and p. 92, para. 133 (A)(1) [*dispositif*]; *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 54, para. 84; p. 95, para. 201; and p. 112, para. 239.

[2] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 50, para. 93.

> "It is, however, the result which is predominant; the principles are subordinate to the goal[1]."

Whilst the dictum was made in the context of the Court's identification of the equitable principles to be applied, if the importance of securing an equitable result overrides the selection of equitable principles it must, *a fortiori*, govern the process of weighing one relevant circumstance against another.

7.15 Accordingly, in the following Chapters of this Part III, the relevant factors and circumstances will be identified and examined, attention being given first, in Chapter 8 below, to those factors of a geomorphological and geological character pertinent to establishing natural prolongation in the present case. For it is the position of Libya that the fact of natural prolongation is established by certain physical factors in this case that serve to identify the natural prolongations of each of the Parties. It is necessary to bear in mind that the Court is not called upon here to draw a line. The eventual line of delimitation will emerge from negotiations between the Parties, applying the Court's Judgment and the principles and rules determined by the Court to be applicable in the present case. For this reason it is not sought to identify the natural prolongations belonging to Libya and Malta by a precise line but rather to indicate the zone within which such a line must be drawn in order to achieve an equitable result. In Chapter 9 below, the other circumstances relevant to delimitation in this case will then be taken up and considered in light of the overriding criterion: *would a boundary within such a zone produce an equitable result*?

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 59, para. 70.

CHAPTER 8

THE PHYSICAL LIMITS OF NATURAL PROLONGATION

Introduction

8.01 In the discussion of the law in Chapter 6 it was shown that natural prolongation remains the primary basis of legal title to areas of the continental shelf, and it was suggested that each Party as a first step must prove that the natural prolongation of its land territory extends into the area in which the delimitation is to be effected. Accordingly, in this Chapter the physical factors of geomorphology and geology will be examined in order to determine the limits of the natural prolongations of Libya and of Malta relevant to a delimitation in this case.

8.02 As to the natural prolongation of Libya seaward from its coast across the Pelagian Block, as noted in paragraph 3.25 above, this fact was thoroughly documented by Libya in its pleadings in the *Tunisia/Libya* case, and the references set forth in footnote 1 to that paragraph (at page 35) may be consulted in this regard. Referring back to the geomorphological and geological description and analysis of the sea-bed and subsoil features in Chapter 3, it will be recalled that the features forming the northern and eastern boundaries of the Pelagian Block and the eastern boundary of the Ragusa-Malta Plateau — that is, the Rift Zone in the north and the Escarpments-Fault Zone in the east — were shown to be features of major geomorphological significance. As was pointed out in paragraph 6.50 above, this Court, as well as the Court of Arbitration in the *Anglo-French Arbitration*, has envisaged the possibility that physical features on the sea-bed may constitute a discontinuity between the natural prolongations of two States. The most recent articulation of this point appears in paragraph 66 of the 1982 Judgment where the Court examined certain sea-bed features to determine whether such features were of such a size and importance as to constitute a "marked disruption or discontinuance of the sea-bed", and hence an "indisputable indication of the limits of two separate continental shelves, or two separate natural prolongations[1]." It is appropriate to examine again the physical characteristics of the sea-bed features present in this case — the Rift Zone forming the northern limits of the Pelagian Block and the Escarpments-Fault Zone constituting the eastern limits of the Ragusa-Malta Plateau and of the Pelagian Block — in the light of this test.

A. The Rift Zone

8.03 The features identified earlier in this Memorial as comprising the Rift Zone that runs between Libya and Malta consist of three Troughs —

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 57, para. 66.

the Pantelleria, Malta and Linosa Troughs — and their geomorphological and geological extension eastward along the Malta and Medina Channels to the Heron Valley where they link up with the Medina (Malta) Ridge. Considering the Troughs first — the Sea-Bed Model, the Slope Map and the description of these features in the technical paper in Part I of the *Technical Annex* (as well as the pertinent statistics set forth in paragraph 3.14 above) all reveal these Troughs to be features of great depth in contrast to the surrounding sea-bed, to have steep flanks, and to be of a considerable size. Geologically, these Troughs are deeply-seated *grabens* which extend into the base of the earth's crust and are part of a Rift Zone which developed in recent geologic times. This Rift Zone is still active: along it, both the sea-bed and subsoil are being deformed today. This fact is borne out by the presence of young volcanics along the Rift Zone on or near the surface of the sea-bed.

8.04 This *graben* structure continues eastward along the Medina and Malta Channels as far as the Heron Valley, dividing the Sicily-Malta Escarpment and the Medina Escarpment and linking up with a prominent geomorphological ridge in the Ionian Basin, the Medina (Malta) Ridge. ② This can be seen with great clarity on *Map 6* facing page 26. Although the eastern part of the Rift Zone in the area of the Channels does not have the same prominence geomorphologically as the Troughs to the northwest, it is geologically as important and active an area of the Rift Zone as the area of the very pronounced Troughs to the northwest. The reasons for the variance in the geomorphological reflection of the fault structures along the Rift Zone were explained in paragraph 3.20 above and demonstrated by *Figure 2* facing page 32[1].

8.05 The direction of the trend of these Troughs (northwest/southeast) matches the "grain" (that is, the general direction of the trends) of the Strait of Sicily and of the axis of the Maltese Islands and the southwest-facing coast of Sicily. These Troughs are not, for example, some random erosional scoop (or scour) created during one of the periods of glaciation. Quite to the contrary, they are the result of the present-day tectonic activity along the North African continental margin causing active rifting along some parts of the Rift Zone (in the area of the Troughs) and shearing along other parts (in the area of the Channels). It is worth noting that the same tectonic forces that caused the Malta Trough as a very deep *graben* also pushed up along its northern rim a *horst* which became the Maltese Islands. The Rift Zone formed by these *grabens* and reflected in the sea-bed and subsoil on these Troughs and Channels divides the Pelagian Block to the south from the geomorphological extension of Sicily to the north, on the eastern portion of which — the Ragusa-Malta Plateau — the Maltese Islands are perched.

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[1] See also Part II of the *Technical Annex*.

8.06 If these Troughs are compared to other sea-bed features that have been discussed in continental shelf jurisprudence, it is apparent that they are quite different from those features, and are far more appropriate than those features to serve as the basis for a delimitation boundary. Two of these features already described and discussed above[1], the Norwegian Trough and the Hurd Deep, illustrate the contrast.

8.07 Although there may not be complete agreement among scientists as to exactly how the Norwegian Trough came to be, its formation is generally attributed to a combination of glacial erosion and accumulation of postglacial isostatic readjustment of Scandinavia and the adjacent sea-floor[2]. What is important is the fundamental difference between the resulting feature and its causes and the Troughs in the Strait of Sicily. The depths of the features are hardly comparable[3]. The steep flanks of the Troughs in the Strait of Sicily contrast sharply with the rather gentle banks of the Norwegian Trough which is shaped like a long, wide valley typical of those formed by glacial erosion. Moreover, the causes of the Troughs and Channels along the Rift Zone are completely different: tectonic rifting with *grabens* extending deeply into the earth's crust in the case of the Rift Zone; glacial and postglacial erosional processes resulting in strictly surface features in the case of the Norwegian Trough. The Rift Zone is the result of geological factors that are modifying the initial flat layers into zones of positive and negative relief and, hence, deforming the sea-bed and subsoil. The events leading to the formation of the Norwegian Trough are past history and over with. And yet the Court in its dictum in the *North Sea* cases implied that such a feature might constitute an interruption of the natural prolongation of Norway[4].

8.08 As to the Hurd Deep, it would hardly seem comparable to the Rift Zone either in respect of its causes or its geomorphology. Although its origin has been subject to some dispute in the past, the view of geologists today is that it is an erosional rather than a tectonic feature, shaped by tidal and fluvial currents at a time of lower sea level, and possibly also affected by glacial ice[1]. It is thus a shallow valley, not a ***graben*** such as the Troughs in the Rift Zone. Its physical dimensions are considerably less pronounced than those of the Rift Zone. Its depth varies from 121-240 metres compared to the adjacent seafloor of 80-90 metres, certainly far less marked than the steep-flanked Troughs: the Malta Trough, for instance, plunges to a maximum depth of 1,714 metres. The width and length of the Hurd Deep are 1-3 nautical miles and 80 nautical miles, respectively. The Malta Trough is 11 nautical miles wide and 87 nautical miles long — the latter being the only dimension in which the two features are not markedly different. However, considering the entire Rift Zone forming the northern limits of the Pelagian Block (see ***Figure 4*** facing page 132) in terms of its length, width and depth and its geological significance, such as its young volcanism and currently active rifting, these features noted by the Court and the Court of Arbitration — the Norwegian Trough and the Hurd Deep — are not comparable to the Rift Zone.

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[1] See paras. 6.45 through 6.48 above and fn. 2 to p. 99.

[2] See CASTON, V.N.D., "The Quaternary Sediments of the North Sea," in BANNER *et al.*, *The North-West European Shelf Seas: The Sea Bed and the Sea in Motion - Geology and Sedimentology*, Amsterdam, Elsevier Oceanogr. Series 24A, 1979, pp. 195-270, at pp. 227-228 and 245-246. (A copy of these pages is attached as *Annex 101*.)

[3] See the statistics of the Norwegian Trough set forth in fn. 2 to p. 99.

[4] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 32, para. 45.

8.09 A third feature, which the Court has taken note of more recently in its 1982 Judgment is the feature called the "Tripolitanian Furrow". This feature, which is part of the Pelagian Block, has already been mentioned in the legal discussion in Chapter 6[2] and its geomorphological characteristics have been described in Chapter 3 of this Memorial and in Part I of the *Technical Annex*. There, the description of sea-bed features
⑪ of the Pelagian Block follows closely the IBCM map, which was not yet generally available at the time of the proceedings in the ***Tunisia/Libya*** case. It was demonstrated there that this whole area of the sea-bed from the line of longitude of Ras Tajura eastwards to the edge of the Pelagian Block at the Medina-Misratah Fault Zone, of which the "Tripolitanian Furrow" is the southern part, is a broad depression on the seafloor which is gently contoured without any marked features at all.

8.10 Geologically, the area of the Pelagian Block represented on the sea-bed as this large depression is a sedimentary basin produced by faulting that began around 200 million years ago and ended about 100 million years later. Almost all the fault-producing rifts in this southern basin have been covered by younger layers of sediment. The contours of the present-day sea-bed reflect the effects of sedimentation and erosion superimposed on this large, old, basin, and the ancient rifting along this basin has no direct present-day expression geomorphologically on the sea-bed[1].

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[1] See KENT, P.E., "The Tectonic Development of Great Britain and the Surrounding Seas", in: WOODLAND, A.W. (ed.), ***Petroleum and the Continental Shelf of North-West Europe. I. Geology***, London, Applied Science Publication, 1975, pp. 3-28; HAMILTON, D. and SMITH A. J., "The Origin and Sedimentary History of the Hurd Deep, English Channel, with Additional Notes on other Deeps in the Western English Channel", ***Extrait du Mémoire du B.R.G.M.***, No 79, (1972), University of Bristol Geological Publication No. 635, pp. 59-78, at pp. 67-71. (A copy of these pages is attached as ***Annex 102***.)

[2] See para. 6.49 above.

8.11 In contrast, in the area of the Medina Channel and the Malta Channel (which geologically could be called the "Medina Graben" and the "Malta Graben[2]") the faults are seen to run up to the surface of the sea-bed. They cause, particularly in the Medina Channel, a substantial seafloor displacement (see Figure No. 1 of Part III of the *Technical Annex*). These Channels (or Grabens) are, as noted above in Part I of this Memorial, extensions eastward of the Pantelleria, Linosa and Malta Troughs (or Grabens) and, considered together, are part of the Rift Zone running all the way east to the Heron Valley at the juncture of the Sicily-Malta and the Medina Escarpments. The figure in Part III of the *Technical Annex* just referred to above shows the volcanism penetrating to the surface of the Medina Graben — a further indication of the present-day activity along these faults. The older volcanism in the southern basin of the Pelagian Block (as well as in the Ragusa-Malta Plateau) lies far below the surface, as pointed out in Part III of the *Technical Annex*.

8.12 It is worth emphasising again that it is not the Troughs of the Rift Zone alone that create such a "marked disruption or discontinuance" of the sea-bed as to constitute an "indisputable indication of the limits of ... two separate natural prolongations". The important feature is the Rift Zone in its entirety of which the Troughs form the northwest part as well as the most pronounced geomorphological manifestation. The Rift Zone continues on across south of Malta, where it appears on the sea-bed as the Malta and Medina Channels continuing eastward to the Heron Valley. This fact is well illustrated by Figure No. 7 of Part II of the *Technical Annex*, a copy of which may be found in the pocket section of Volume III[3]. An interpretative diagram appearing as *Figure 4* following this page has been produced by the authors of that figure to show in simplified form the extent and importance geologically of this Rift Zone. Figures Nos. 5 and 6 of Part III of the *Technical Annex*, copies of which may be found in the pocket section of Volume III, also demonstrate the same point as explained in the text of that technical paper. It is the significance of this Rift Zone that has even led some geologists to conclude that a new micro-plate boundary is forming along it (see paragraph 3.51 above and Part III of the *Technical Annex*).

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[1] Further discussion of this area of depression along the southern part of the Pelagian Block seems unnecessary. It is situated well to the south of any area to which Malta has asserted continental shelf rights.

[2] See Part III, *Technical Annex*.

[3] This figure is entitled: "Fault Map of the Central Mediterranean showing Bathymetric Correlation."

8.13 In this context, it is pertinent to quote from paragraph 95 of the Court's 1969 Judgment in which the relevance of geology was pointed up in explaining the significance of sea-bed and subsoil features. The Court stated:

> "The appurtenance of the shelf to the countries in front of whose coastlines it lies, is therefore a fact, and it can be useful to consider the geology of that shelf in order to find out whether the direction taken by certain configurational features should influence delimitation because, in certain localities, they point-up the whole notion of the appurtenance of the continental shelf to the State whose territory it does in fact prolong[1]."

It is to just such use that this Memorial has put the scientific facts of geology. In Libya's view these facts show that the Rift Zone constitutes a fundamental discontinuity existing today in the sea-bed and subsoil and forms an actual separation in the natural prolongations of Libya northward and Malta southward. As such, the Rift Zone serves to "point-up" those portions of the continental shelf that are appurtenant to Libya and Malta inasmuch as it marks the limits of each State's area of entitlement to areas of continental shelf lying between them.

B. The Escarpments-Fault Zone

8.14 There is another group of geomorphological features of major geological importance and of great relevance to this case. These features consist of the Sicily-Malta Escarpment, dividing the Ragusa-Malta Plateau from the Ionian Basin, and the Medina Escarpment and Medina-Misratah Fault Zone which form the eastern boundary of the Pelagian Block.

8.15 The pertinent details regarding these features were set forth in paragraphs 3.21 through 3.24 above. The geomorphological prominence of these features at least as far south as the 33° 30′ N latitude is evident from the various bathymetric charts, the Slope Map, the Sea-Bed Model and the other figures referred to here, in Part I above and in the *Technical Annex*. (See, in particular, the photograph of the Sea-Bed Model taken from the east which appears at the end of Part IV, *Technical Annex*.) The steep descent at the Sicily-Malta Escarpment is also well depicted by Figure No. 2 in Part III of the *Technical Annex*. This Escarpment is among the most marked geomorphological features in the entire Mediterranean. It is clear that these two Escarpments and the Fault Zone form the eastern boundary of the Ragusa-Malta Plateau and of the Pelagian Block; it is equally clear that the Sicily-Malta Escarpment terminates any natural prolongation east of Malta.

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[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 51, para. 95.

8.16 Of course, as noted in paragraph 3.24 above, the Libyan coast continues on eastward past this line of Escarpments and Fault Zone; areas of continental shelf to the east of this line are the natural prolongation to the north of the Libyan landmass into and under the Ionian Sea. However, the extent of Libya's rights to areas of continental shelf in this area to the east are related to the rights of other States that border on the Ionian Sea and are not in issue in this case[1].

Conclusions

8.17 The Rift Zone can thus be regarded as a physical feature which constitutes, in the words of the Court, "a marked disruption or discontinuity of the sea-bed". It produces an "indisputable indication" of the limits of the natural prolongations of Libya and Malta. Its length, width, difference in relief, tectonic setting, geomorphology, seismicity, volcanism and oceanographic implications[2] place it in the front rank of Mediterranean geomorphological-geological features and lead to the conclusion that the natural prolongations of Malta and Libya in the areas of shelf lying between them are separated by this feature. The Rift Zone indicates the boundary zone between Libya's entitlement to areas of continental shelf to the north of the Libyan landmass and Malta's entitlement to areas of continental shelf to the south of the Maltese Islands.

8.18 Similarly, any natural prolongation east of Malta is terminated by the Sicily-Malta Escarpment which divides the Ragusa-Malta Plateau and the Ionian Sea. The great geomorphological relief of this feature alone makes further elaboration of this conclusion unnecessary. In the Chapters which follow it remains to be considered whether a delimitation boundary within the Rift Zone extending eastward to where it meets the southern part of the Sicily-Malta Escarpment in the vicinity of the Heron Valley would lead to an equitable result in light of the other circumstances relevant to this case.

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[1] See paras. 9.44 through 9.60 below.

[2] As was noted in paragraph 2.10, an underwater "river" with currents which perform an important oceanographic function follows the geomorphological contours of the Rift Zone and reinforces its significance as a boundary.

CHAPTER 9

THE RELEVANT CIRCUMSTANCES OF THIS CASE

9.01 As the Court said in paragraph 72 of the 1982 Judgment:

> "It is clear that what is reasonable and equitable in any given case must depend on its particular circumstances. There can be no doubt that it is virtually impossible to achieve an equitable solution in any delimitation without taking into account the particular relevant circumstances of the area[1]."

It was observed in paragraph 6.38 above that in a continental shelf delimitation the Court is faced with complex situations of fact, which facts must be identified and given appropriate weight as circumstances relevant to an equitable result in the particular case. It is to this task that this Memorial now turns: the identification and weighing of the factors of this case considered by Libya as constituting relevant circumstances to be taken into account in reaching an equitable delimitation.

A. The Physical Factors of Geomorphology and Geology

9.02 The fact of natural prolongation, and the physical factors of geomorphology and geology constituting evidence of natural prolongation, are necessarily of prime significance in arriving at the "equitable result" which is the basic objective governing delimitation of the continental shelf. In its 1982 Judgment, the Court made clear that such physical factors, even if they would not be regarded as such a disruption or discontinuity of the natural prolongation of two States as to make it possible to identify a clear division between two separate natural prolongations, may nevertheless qualify as relevant circumstances[2]. In the *Tunisia/Libya* case the Court did not find the criterion of natural prolongation useful in leading to a delimitation under the particular circumstances of that case. However, as has been demonstrated in the preceding Chapter, the present case is quite different: natural prolongation as established by the particular physical factors of geography, geomorphology and geology in evidence here does provide the basis for a delimitation. A boundary zone dividing the natural prolongations of the Parties in the sea-bed areas lying between Libya and Malta can be physically identified. Geomorphological and geological features of such significance that they evidence a separation between two distinct natural prolongations, are also, *a fortiori*, one of the main relevant circumstances in any equitable delimitation. In this particular case, these features constitute a factor of prime importance, the relevance of which is reinforced by the geographical facts of the case.

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 60, para. 72.

[2] *Ibid.*, p. 58, para. 68.

B. Geography

9.03 The geographical setting of the present case was described in some detail in Chapter 2, starting with the broad context of the Mediterranean Sea and then narrowing the focus to the Central Mediterranean and to Libya and Malta. In Chapter 6, the legal relevance of geography, and in particular of coastal lengths and configurations, was discussed. Before turning to the significance of the coasts and of size in this case, however, it is useful to return briefly to the broader context of the Mediterranean. It is evident that this particular delimitation does not concern an isolated island situated in a large ocean, such as the Atlantic Ocean with an expanse of some 82 million square kilometres or the Pacific Ocean (165 million square kilometres) or the Indian Ocean (73 million square kilometres), but concerns an island in the much smaller Mediterranean Sea (2.5 million square kilometres) surrounded by other, and much larger, coastal States[1]. Nor does it concern, as opposite coasts, two similar islands or two similar landmasses, but rather the long, extended coast of a continental landmass opposite small islands.

9.04 Not only is the total surface of the Mediterranean relatively restricted — being in part composed of a number of smaller seas surrounded by peninsulas on the north — but also the main body of open water in the Mediterranean is in fact considerably less than the figure of 2.5 million square kilometres would indicate. The Tyrrhenian, Adriatic and Aegean Seas are bordered by land peninsulas or comparable peninsulas formed by islands (*e.g.*, Corsica and Sardinia) that have the effect of creating out of the totality of the Mediterranean several separate seas, themselves almost enclosed by land. In fact, as discussed in Chapter 2, only a few open areas of sea exist in the Mediterranean.

9.05 A second and related characteristic of the Mediterranean, brought out in Chapter 2, is its long, thin configuration, a geographic fact directly related to its geologic origins. Not only are the continental landmasses along the north and south of the Mediterranean relatively close together, but much of the sea is dotted with islands.

9.06 This relative lack of distance in the Mediterranean — so evident
① from any map of the area (see, for example, *Map 1* facing page 10)—and
the narrowness, complexity, and restrictiveness of areas of open sea in the

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[1] There is also a marked contrast geomorphologically and geologically between the Mediterranean Sea and those large deep oceans where the sea-bed structures and the typical sequence of continental shelf, slope, rise and deep ocean bed are so very different, particularly when compared with the area of the Central Mediterranean between Malta and Libya.

Mediterranean constitute important circumstances relevant to the delimitation in this case. The factors of size and narrowness mean that there is a relatively limited area of sea-bed for delimitation among the many Mediterranean States and islands. Necessarily, the States bordering on this Sea will have to be content with smaller claims to continental shelf here than if (or where) they bordered on a large ocean such as the Atlantic.

9.07 If States with coasts on the Mediterranean must necessarily scale down their claims to continental shelf in recognition that this sea is crowded by many coastal claimants, a small group of islands such as Malta must also, according to equitable principles, necessarily expect a relatively small area of continental shelf. The Mediterranean Sea is hardly the place for disproportionate claims. Moreover, this sea offers no area in which "inequities" might be redressed. A similar point was made in the *Anglo-French Arbitration*, where the Court of Arbitration observed that the narrow waters of the English Channel in the area of the Channel Islands did not offer the same "scope for redressing inequities" as did the open waters of the Atlantic Ocean, for example, to the east of St. Pierre and Miquelon[1]. As a consequence, factors such as size and proportionality acquire special importance in such a setting.

9.08 Hence the setting of this delimitation in the Mediterranean must be considered a relevant circumstance in this case. The position of Malta in such a confined area points up the inequity of applying equidistance in the present case.

9.09 Just as the Mediterranean Sea viewed in its entirety has unique aspects that are relevant circumstances to be taken into account in achieving an equitable delimitation in this case, so also the specific area of the Central Mediterranean has its particular characteristics. For example, it is the area where four neighbouring States face the greatest expanse of shallow continental shelf in the Mediterranean. As will be more fully discussed in Section D below, the interests of other States in this area will have to be kept in mind in achieving an equitable delimitation in the present case.

9.10 In the setting of the Central Mediterranean, it is of interest to note how Malta in so many ways is linked to the north. East/west shipping routes cross to the north of Malta. It is here that the greatest risk of marine pollution lies, and it is along this northern coast that pollution damage would be highest. Indeed, the topography of Malta slopes toward the north, and it is on the northern side of Malta, where its principal ports are located, that Malta's main security interests also lie.

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[1] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 95, paras. 200-201.

These connections to the north are reinforced by the geomorphological and geological links of Malta to Sicily, so evident when the sea level was below its present level following the last recent glaciation and the Islands of Malta were attached by dry land to Sicily[1].

9.11 If the focus is narrowed, it is apparent that the most significant relevant circumstance of a geographic character in this case is the difference between the size of Malta and the size of Libya and the fact that Malta, considered on the basis of any criterion, is a small group of small islands while Libya is a vast continental State. Such a comparison may be made from the standpoint both of surface areas and, especially, of coastal lengths[2].

9.12 To recall certain facts set forth in Chapter 2, Malta is composed of four little islands: Malta (246 square kilometres), Gozo (66 square kilometres), Comino (2.7 square kilometres) and Cominotto (less than one-tenth of a square kilometre). Thus, the Maltese State exercises its sovereignty over a land territory of about 315 square kilometres. By comparison, the continental landmass of Libya measures some 1,775,500 square kilometres. A comparison between the surface areas of the two Parties shows the ratio of 1 : 5,636. The pertinence of this comparison of landmasses readily appears from the statement of the Court in its 1969 Judgment that the continental shelf of a State is the natural prolongation of its land territory[3]. It would seem, therefore, that the size of the landmass should have some correlation with the extent and "intensity" of its natural prolongation into and under the sea.

9.13 The coastal lengths of the States concerned, representing the opening of their territories toward the sea, have also been singled out by the Court as a circumstance of particular relevance. In its 1969 Judgment, the Court stressed this in the following terms:

> "... the principle is applied that the land dominates the sea; it is consequently necessary to examine closely the geographical configuration of the coastlines of the countries whose continental shelves are to be delimited.... Since the land is the legal source of the power which a State may exercise over territorial extensions to seaward, it must first be clearly established what features do in fact constitute such extensions[4]."

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[1] See paras. 3.38 through 3.45 above.

[2] The relationship between the coasts of the two Parties may be seen on *Map 12* following this page.

[3] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 22, para. 19.

[4] *Ibid.*, p. 51, para. 96.

As noted in Chapter 6 above, the Court of Arbitration in its 1977 Award also emphasised the relationship of the coast of a State to the extent of continental shelf that appertains to that coast by saying:

> "A State's continental shelf, being the natural prolongation under the sea of its territory, must in large measure reflect the configuration of its coasts[1]."

9.14 The Court in its 1969 Judgment had also drawn certain consequences from this relationship, putting emphasis on "the element of a reasonable degree of proportionality which a delimitation effected according to equitable principles ought to bring about between the extent of the continental shelf appertaining to the States concerned and the lengths of their respective coastlines[2]". When such a comparison is made between Malta and Libya, the following salient facts appear: the entire Maltese coast, measured all around the circumference of each individual island and irrespective of the direction in which it faces, reaches a length of about 190 kilometres; the Libyan coast from Ras Ajdir to the Egyptian border is 1,727 kilometres. The ratio between these two lengths is about 1 : 9.1.

9.15 Although this ratio is useful in showing the great disparity between the length of the coasts of the two Parties, it is not otherwise meaningful. For, as *Map 12* would suggest, the whole of the lengths of the Maltese and Libyan coasts, used in this ratio, are not relevant to the delimitation. It is evident that what is relevant is a comparison of the coasts of Malta and of Libya which are "opposite" in the sense that such coasts are legally relevant to the delimitation in this case.

9.16 It is not necessary for these purposes to describe here in a precise way which coasts are, in a juridical sense, relevant to the delimitation and which must be taken into consideration as such. This will be done in Chapter 10 below. But for the purpose of a broad comparison, a line may be constructed between the westernmost point on the Island of Gozo and the easternmost point on the Island of Malta. As thus defined, this line is somewhat less than 45 kilometres in length.

9.17 A similar exercise is more difficult to make on the Libyan coast because of its sheer length in a generally east/west direction. Because of this difficulty, and since the purpose here is not to determine which coasts are, in a juridical sense, relevant, but which Libyan coast may be said, just by looking at a map, to face generally northwards, two examples of coastal length may be used for comparison. The first one would be the Libyan coast fronting on the entire Central Mediterranean, between Ras Ajdir and Ras Amir[1]. A straight line drawn between these two points is about 1,000 kilometres long. A second example would be the Libyan coast from Ras Ajdir to Ras Zarrouq. For reasons that will be fully discussed in Chapter 10, this latter example would appear more suitable, since it is this stretch of coast that fronts on the area of the Pelagian Sea between the two Parties. A straight line connecting these points would measure roughly 350 kilometres in length.

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[1] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 60, para. 100.

[2] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 52, para. 98. In its 1982 Judgment, the Court recalled that the element of a reasonable degree of proportionality between the extent of the continental shelf areas appertaining to the coastal State and the length of its coast measured in the general direction of the coastline "is indeed required by the fundamental principle of ensuring an equitable delimitation between the States concerned". *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 75, para. 103.

9.18 Compared to the Maltese coastal front as determined above, the Libyan coastal fronts so defined show ratios of about 1:22 and 1:8, respectively. Thus, depending on what coastal fronts are chosen for comparison between Malta and Libya, the ratios range from 1:22 to 1:8. The latter ratio of 1:8 — based on the Libyan coast fronting on the Pelagian Sea — is in fact quite close to the ratio between the entire lengths of coast of each Party of 1:9.1 mentioned in paragraph 9.14 above.

9.19 In order to place the relevant circumstance of Malta's size in the broader context of the Mediterranean as a whole, comparisons are set forth in Tables 1 and 2 following this page comparing the surface area and coastal length of Malta with other Mediterranean islands[2]. Table 1 shows that the surface area of Malta is relatively close to that of the Island of Imroz, but considerably less than that of Ibiza or of Djerba. Table 2, which takes into account the total lengths of coasts — and, as has been seen, it is not the entire coastline of Malta which is relevant in this case — ranks Malta between Rhodes and Corfu.

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[1] See *Map 12*. This purely hypothetical example in no way implies that the entire length of this coast of Libya is relevant to the dispute in this case.

[2] This listing of islands in these Tables does not purport to cover all the islands of the Mediterranean, many of which have not been included, but rather to give a representative listing of them.

Table 1

Comparison of surface areas of Mediterranean islands

(in Km^2)

Sicily	25,708
Sardinia	24,090
Cyprus	9,251
Corsica	8,835
Crete	8,263
Majorca	3,639
Rhodes	1,398
Minorca	702
Corfu	573
Ibiza	572
Djerba	514
Malta	315
Imroz	259
Elba	223
Kerkennahs	155
Pantelleria	83
Formentera	76
Ischia	47
Lipari	37
Lampedusa	21
Vulcano	21
Giglio	21
Farigna	19
Stromboli	12
Marettimo	12
Capri	10
Ustica	8
Galite	8
Linosa	5
Alboran	1
Lampione	1

Table 2

Comparison of coastal lengths of Mediterranean islands
(in Km)

Sardinia	1,045
Sicily	978
Crete	855
Corsica	670
Cyprus	537
Majorca	428
Rhodes	204
Malta	190
Corfu	176
Minorca	158
Ibiza	153
Kerkennahs	126
Djerba	125
Elba	111
Imroz	80
Formentera	75
Pantelleria	44
Lampedusa	41
Ischia	34
Lipari	32
Farigna	29
Giglio	23
Vulcano	21
Capri	19
Marettimo	19
Stromboli	16
Galite	14
Ustica	13
Linosa	11
Lampione	1
Alboran	1

9.20 To generalise from the statistics in Tables 1 and 2 above, even in the Mediterranean an island having a surface area of less than 350 square kilometres and an overall coastal length of less than 200 kilometres must be regarded as small indeed. It is seen that Malta's measurements of 315 square kilometres and 190 kilometres, respectively, group it with the smaller islands which are preponderant in the Mediterranean, particularly when it is noted that the measurements for Malta appearing in Tables 1 and 2 are based on the totals for *all* the Maltese Islands, and not for each island individually.

9.21 The simple comparison of the statistics set forth in the preceding paragraphs makes the obvious point that Malta and Libya are, in terms of size, just not comparable. But the effort to find a basis for comparison becomes more complex when certain questions are posed: how may a small island group, with coasts facing in all directions, be compared with a large continental landmass having a long coastal front running, broadly speaking, in one direction? This question might be simplified if the small island lay close to the continental landmass. But this is not the case here: Malta lies approximately 185 nautical miles north of the Libyan shore.

9.22 In Chapter 6, the point was brought out that islands have been accorded no special or privileged status in delimitation. The facts are what they are and there can be no thought of refashioning nature[1]. Jurisprudence has already been confronted with the problems raised by small islands in the context of restricted seas like the Mediterranean. In paragraph 6.84 above, the treatment of the Channel Islands in the *Anglo-French Arbitration* was mentioned in this regard. The result was a "second boundary" in the middle of the French continental shelf, which the Court established so as to leave "a zone of seabed and subsoil extending 12 nautical miles from the baselines of the two Bailiwicks[2]". In the *Tunisia/Libya* case[3], the Court, when confronted with the question of the effect on the delimitation of the Kerkennah Islands, chose to apply the "half-effect" technique. It supported this choice on a number of grounds, and noted that "the area of the islands is some 180 square kilometres". As for the Tunisian Island of Djerba, which as Table 1 indicates has a substantially larger landmass than the Maltese Islands even when they are taken together, the Court indicated that other considerations prevailed over the effect of its presence and, accordingly, Djerba had no effect on the delimitation in the *Tunisia/Libya* case[4].

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[1] Judge Oda, in his dissenting opinion in the 1982 Judgment, emphasised this idea in the following way:

> "In sum, the inequality of geography is a fact of the world, nature cannot be refashioned, and the Court has no competence to guess at or initiate any future policy of world social justice, going beyond the existing principles and rules of international law." *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Dissenting Opinion of Judge Oda, I.C.J. Reports 1982*, p. 256, para. 159.

[2] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), pp. 95-96, para. 202.

[3] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 88-89, para. 128.

[4] *Ibid.*, p. 64, para. 79

9.23 Of particular pertinence is the continental shelf delimitation agreement of 1971 between Italy and Tunisia[1] which involved the same general area of the Mediterranean. Although the line of delimitation between Italy and Tunisia generally follows the median line, the treatment of the Islands of Lampione, Lampedusa, Linosa and Pantelleria is different. Each of these islands is given a 12 nautical mile enclave — coinciding with the territorial sea — and, except for the tiny Island of Lampione, an additional band of continental shelf of one nautical mile beyond the territorial sea limit. This is an instructive example, for it shows how minimal is the shelf area added to the Italian shelf by virtue of those islands. In effect, the shelf area is attached to the large Island of Sicily: the additional entitlement of those small islands is either nil or, in the cases of Pantelleria, Lampedusa and Linosa, one mile.

9.24 Thus, the geographic factor of comparative size must be regarded as a key relevant circumstance of importance in this case. The proportionality test, which is a test of the equitableness of the result, in fact depends upon the comparison of the two coasts. As will be shown in Chapter 10 below, a boundary falling within the Rift Zone would meet the proportionality test in this case.

C. Conduct of the Parties

9.25 The conduct of the Parties, especially with respect to their attitudes concerning what they regard as the extent of their jurisdiction over submarine areas and the granting of licences or concessions for the exploration of the resources of the continental shelf, may constitute, according to the Court's jurisprudence, relevant circumstances to be taken into account in reaching an equitable delimitation. In the *Tunisia/Libya* case, for example, the Court had cause to examine the maritime legislation of each party, the relevance or irrelevance of historic fishing rights, and the practice of the parties with respect to the enactment of petroleum licensing legislation and the grant of petroleum concessions. As to these last two factors in particular, the Court deemed them "highly relevant to the determination of the method of delimitation[2]".

9.26 In the present case, however, since the emergence of the dispute, it is clear from the conduct of the Parties that there is no specific line — no *de facto* arrangement — between Libya and Malta which could be used as the basis for an equitable delimitation. What their conduct does show very clearly, however, is the extent of each side's claims as against the other. As such, an examination of their conduct sheds light on the area really in dispute between the Parties.

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[1] *Atlante dei Confini Sottomarini*, CONFORTI, B. and FRANCALANCI, G. (ed.), Dott A. Giuffrè Editore, Milan, 1979, pp. 79-83. (A copy of these pages is attached as *Annex 103.*) This Agreement did not come into force until 1978.

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 83, para. 117.

9.27 Turning first to the maritime legislation enacted by the Parties, it is apparent that Malta and Libya have had fundamentally different approaches toward defining the outer limits of their respective maritime jurisdictions. While the tendency was for the authorities in Libya both before and after independence to define the limits of jurisdiction by lateral boundaries leaving open the precise northern limits of that jurisdiction, Malta's approach has been otherwise.

9.28 The Maltese Fish Industry Act, 1953, for example, was applicable "within the territorial waters of Malta" which were established at three nautical miles at the time. In 1971, the breadth of the territorial waters was extended to 6 nautical miles and a fishing zone and a contiguous zone were declared extending 12 nautical miles from the baselines. In 1975, the breadth of the fishing zone and contiguous zone was extended to 20 nautical miles; and in 1978 after the signature of the Special Agreement, these zones were extended to 24 and 25 miles, respectively, while the breadth of the territorial waters was fixed at 12 nautical miles. Thus, like the concentric waves sent by a pebble thrown in the water, the various maritime limits of Malta extended further and further seawards.

9.29 Of particular significance was the Continental Shelf Act, 1966, passed by the Maltese House of Representatives on 22 July 1966. This is, of course, internal legislation which, as such, is not binding on third parties. It is not, however, without juridical interest at the international level, since it gives other States a representation of Malta's claims over the continental shelf. Although the text of this Act may be found at *Annex 15* of this Memorial, the first paragraph of its Section 2 is quoted below:

> "'[T]he continental shelf' means the sea bed and subsoil of the submarine areas adjacent to the coast of Malta but outside territorial waters, to a depth of two hundred meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; so however that where in relation to states of which the coast is opposite that of Malta it is necessary to determine the boundaries of the respective continental shelves, the boundary of the continental shelf shall be that determined by agreement between Malta and such other state or states or, in the absence of agreement, the median line, namely a line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial waters of Malta and of such other state or states is measured."

9.30 It appears that this paragraph deals with two questions which, although complementary, are nevertheless separate. The first concerns the definition of the continental shelf, and thus the Maltese claim to juridical title over the continental shelf; the second deals with the method to be used in cases where there is a potential delimitation between Malta's continental shelf and the continental shelf of one or more States whose coasts are opposite Malta. Thus, the question of title antecedes that of delimitation, and lays the conditions under which the latter may arise.

9.31 The text cited above sets forth Malta's definition of the continental shelf, and provides its outer limits. These are determined according to two criteria: the 200 metre isobath or the depths of the superjacent waters that admit exploitation of the resources.

9.32 In light of Malta's 1966 legislation, it is of interest to note the manner in which Malta granted petroleum concessions. In 1970, the first year in which Malta offered offshore blocks for bidding[1], the limits of those blocks were grouped close in around the island, as illustrated on the first overlay to *Map 13* following this page, and almost perfectly coincided with the 200 metre isobath. To the north, the limit of the blocks ran very close and parallel to an equidistance line between Malta and Sicily.

9.33 In 1973, Malta's interest in granting concessions shifted to the south. As discussed in Chapter 4 above, 16 offshore blocks were offered in that year. These blocks followed the geomorphology of the area. As the second overlay to *Map 13* illustrates, the borders of Blocks Nos. 6, 11 and 16 correspond with remarkable fidelity to the edge of the Medina Escarpment. No blocks were granted in the narrow area that encompasses Block No. 1 which corresponds almost precisely with the Medina and Malta Channels, a deeper geomorphological feature that has been discussed previously and is part of the Rift Zone. All of the 16 blocks offered south of Malta were not granted, however. Those that were, as *Map 13* shows, were tightly clustered in the Medina Bank area. This fact undoubtedly reflects the practicalities of offshore drilling for oil companies whose conception of exploitability depends on the technical and economic realities involved[2].

9.34 The second aspect of the text cited above from the 1966 Act relates to delimitation. Here, it is of great interest to note that, while this Maltese legislation may be seen to have adhered fairly closely to the criteria set forth in Article 1 of the 1958 Convention, the same may not be said of Malta's adherence to Article 6 of the 1958 Convention dealing with delimitation. For, as noted previously, Section 2 of the 1966 Act contains a very basic distortion of the text of Article 6 (1) of the 1958 Convention. This is the total absence of any reference whatsoever to "special circumstances".

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[1] See para. 4.29 above.

[2] It may be recalled that the grant of these concessions was protested by Libya. See *Annexes 47* and *66*.

9.35 Under the 1966 Act, delimitation between Malta and States with opposite coasts is either to be by agreement or, "in the absence of agreement, the median line...". This is to be contrasted with the provision in Article 6 (1) of the Convention which states that: "In the absence of agreement, *and unless another boundary line is justified by special circumstances*, the boundary is the median line...[1]".

9.36 Article 6 is one of those articles in the Convention to which, under Article 12, reservations may be made at the time of signature, ratification or accession. But Malta did not choose to make any reservation to Article 6 when it notified the Secretary-General of the United Nations on 19 May 1966 (barely two months before the enactment of Malta's 1966 Continental Shelf Act) that it considered itself bound, as from the date of its independence, by the 1958 Convention.

9.37 More important is the way in which the provisions of the 1966 Act dealing with delimitation fit into the framework of Malta's conduct throughout the diplomatic exchanges with Libya and its grants of petroleum concessions. As has been pointed out in Chapter 4 dealing with the background of the dispute, Malta has relied on the median line. In 1965, a Maltese Note Verbale mentioned the "median line" as its proper continental shelf boundary. Its proposals to Libya in 1972 focused on the "Median Line". So also did Malta limit the grant of concessions on the south to the median line between Malta and Libya, and did not protest any Libyan petroleum activities south of that line.

9.38 Indeed, Malta's reliance on the median line as the basis for delimitation was emphasised before this Court during the oral hearings on Malta's application to intervene in the *Tunisia/Libya* case, where Counsel for Malta displayed a map on which was drawn a line "with which Malta had depicted her continental shelf boundary[2]". That line was a median line drawn between Malta and each of Libya, Italy and Tunisia, with the exception of enclaves which were drawn around the smaller Italian islands of Lampedusa, Lampione and Linosa. In the light of these actions, and particularly Malta's own legislation as reflected in its 1966 Act, Malta appears committed to the median line.

9.39 In sharp contrast, Libya's maritime legislation left open the question of the seaward extent of its jurisdiction. Although Libyan Law No. 2

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[1] Italics added.

[2] Presentation of Mr. E. Lauterpacht, Q.C., at the Oral Hearings in the *Tunisia/Libya* case, Request by Malta to Intervene, Thursday, 19 March 1981, morning session. Libya reserves its position as to the accuracy of this map, a copy of which has been reproduced in a reduced version and attached as *Annex 104*.

of 1959 did fix the breadth of Libya's territorial sea at 12 miles, the Petroleum Law No. 25 of 1955 and Petroleum Regulation No. 1 (and ⑩ Map No. 1 attached thereto) fix no seaward limit to Libyan jurisdiction over the continental shelf.

9.40 The Libyan position was defined in a proposal transmitted by representatives of Libya during the course of meetings held in 1973 with ⑤ their Maltese counterparts. This position, illustrated on *Map 9* facing page 58 was, of course, considerably to the north of an equidistance line, falling within the area of the Rift Zone.

9.41 Libya had, in addition, issued protests or reservations against the grants of Maltese concessions in 1974 in the Medina Bank area. These protests were entirely consistent with Libya's view that the limit to petroleum concessions did not constitute boundaries to the continental shelf, and that the equidistance method did not constitute a rule of international law to be applied as between Malta and Libya. Libya thereby made it quite clear that it did not recognise any Maltese rights over a zone which it considered fell under Libyan jurisdiction.

9.42 Libya's views on the median line, and on the extent of its jurisdiction over the continental shelf, were further confirmed by actions it took with regard to drilling activities in the disputed area. For its part, Libya exercised restraint and respected the understanding that had been reached with Malta at the time of the signing of the Special Agreement that no drilling would take place in the area in dispute until after the Court had decided the case. This did not prevent Libya, however, from taking a firm stance in refusing to let drilling activities proceed in the Medina Bank area when Malta authorised such activities in 1980. It also did not prevent Libya from refusing to agree to Malta's proposal to establish first a five-mile, and later a fifteen-mile, zone on either side of a median line to the north of which Malta would be permitted to drill and to the south of which Libya would be allowed to do the same. For Malta's proposal was really nothing other than another attempt to impose the median line on Libya as the basis for a *de facto* delimitation. Libya could only refuse such a position, as it had on previous occasions when Malta had proposed the median line as the solution to delimitation.

9.43 From this brief resume of the conduct of the Parties relevant to the present case certain conclusions may be drawn. *First*, no specific line of delimitation or *de facto* arrangement appears from the conduct of the Parties since the emergence of the dispute. *Second*, the different approaches taken by the maritime legislation of Libya and Malta make clear that Libya left open the northern limits to its continental shelf by virtue of its legislation whereas the Maltese legislation specified the extent of what it claimed to be its maritime jurisdiction. The concessions offered and granted by Malta pursuant to its legislation therefore are relevant to the boundaries of Malta's claims: they followed geomorphological features in a manner consistent with the "exploitability criterion". Libya, on the other hand, in granting its concessions did not purport thereby to limit the extent to its jurisdiction over the continental shelf. *Third*, the position set forth by Libya in 1973 taking account of coastal lengths and depicted on ⑤ *Map 9* facing page 58, lies far to the north of a median line and has been maintained by Libya. This line lies within the boundary zone which Libya proposes in this Memorial should be the basis for negotiations between the Parties to arrive at a precise line of delimitation. *Fourth*, Libya has protested any activities of Malta falling within areas considered to lie within Libya's continental shelf and has itself refrained from drilling in disputed areas until the matter of delimitation has been settled between the Parties. Similar restraint has not been exercised by Malta which, apparently pressed by its concession holders, has attempted to drill in areas which Libya considers fall under its jurisdiction.[1] *Fifth*, Malta has consistently advocated delimitation along a median line and Libya has consistently refused to accept equidistance as the basis for an equitable delimitation in this situation.

D. Delimitations with Third States

9.44 As the geographical portions of this Memorial have demonstrated, the continental shelf delimitation between Libya and Malta is not to take place in a vacuum, and account must be taken of a factor which the Court in its 1982 Judgment described as "... the circumstance of the existence and interests of other States in the area, and the existing or potential delimitations between each of the Parties and such States ...[2]".

9.45 The Central Mediterranean has already been described above, but reference may again be made to *Map 12* facing page 138, which shows this area to be bounded by four States: to the west, Tunisia; to the northwest and northeast, respectively, Italy and Greece; and to the south, Libya. West of the centre of the maritime space so defined by the coasts of these four States, in the part bounded by the coasts of Sicily, Tunisia and Tripolitania in Libya, lies the small group of Maltese Islands. What is immediately apparent from this setting is that the dimensions of Malta are not on the same scale as those of the other States that abut the Central Mediterranean. This geographical fact has to be borne in mind while examining the delimitations relevant to this area.

9.46 For the convenience of the Court, the delimitations discussed here have been placed on a map of the Central Mediterranean, *Map 14*.

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[1] See para. 4.76 above.

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 64-65, para. 81. Libya reserves its position as to each of the individual delimitation agreements between States other than Libya mentioned in the ensuing paragraphs.

Superimposed on this map is an overlay showing the claim of Malta as depicted on the map used by Malta during the intervention proceedings in the *Tunisia/Libya* case[1]. Beginning, first, on the east, there is the Agreement concluded in 1977 between Italy and Greece[2]. The extent of this agreement may be seen on *Map 14*. From the geographical configuration of the coasts which the parties seem to have used in constructing the delimitation line, and the fact that the parties used the term "median line[3]" in their agreement, it appears that Italy and Greece considered their coasts to be opposite coasts. As the map illustrates, the relevant coasts of Italy and Greece involved in the delimitation were of approximately equal length.

9.47 The particular interest in this Agreement, however, lies elsewhere. Point 16, where Italy and Greece provisionally placed the southern end of the boundary line (allowing for future delimitations with third States), lies in the Ionian Abyssal Plain roughly at the latitude of Crete and very slightly to the south of the latitude of Malta. The Ionian Abyssal Plain is the major geomorphological and geological feature in the Ionian Sea and is located in its approximate centre. It lies between the States of Italy, Greece and Libya. To show the relationship between the geomorphology of the area and the other delimitations discussed here, as well as the claim of Malta, the lines of delimitation of these agreements and the line claimed by Malta have also been placed on a bathymetric map of the area. This map appears as *Map 15* following this page.

9.48 The Italy-Greece Agreement, therefore, provides for a roughly north/south delimitation, running slightly east of the 18°E meridian, and ending at point 16. If this line were notionally prolonged, it would intersect the Libyan coast in about the middle of the Gulf of Sirt. This brings to light the relationship which exists, as appears on *Map 14*, between the coasts of Italy, Greece and Libya in the area of the Ionian Sea.

9.49 As can be seen from the overlay to *Map 14*, Malta's claim to a continental shelf went further east than the 18° E line of longitude[4]. It would therefore cut off any meaningful delimitation between Libya and Italy in the Ionian Sea. In effect, a little island group comprising a mere 190 kilometres of coastline, only a very small portion of which even faces the Ionian Sea (approximately 5.4 kilometres), would generate the largest area of shelf of any part of the Maltese coast and would erase the obvious relationship that exists across this Sea between the coasts of mainland Italy and of Libya. Such a result is on its face inequitable.

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[1] See para. 9.55 below.

[2] *Atlante dei Confini Sottomarini, op. cit.*, pp. 89-91. (A copy of these pages is attached as *Annex 105*.)

[3] See Preamble and Article I of this Agreement in *Annex 105*.

[4] In fact, Malta's claims as set forth in its 1972 proposal to Libya went as far east as 18° 04' 06" E.

9.50 A second delimitation of interest in the area is that which resulted from the 1971 Agreement between Italy and Tunisia[1]. This Agreement was based on an application of a modified "median line[2]": those States also seemed to regard their coasts as facing coasts. The agreed-upon line of delimitation gives some indication why it may be considered that the median line produces an equitable result between Italy and Tunisia, at least as to that part of the line that falls in the Strait of Sicily. Apparently, the control points which served for the construction of the line are to be found along baselines representing, on the Italian side, the entire southern coastline of Sicily (approximately 305 kilometres) and, on the Tunisian side, the coast from Cape Bon to about the latitude of the Kerkennah Islands (approximately 290 kilometres). Considered as opposite, those coasts may also be seen as broadly equal in length.

9.51 The Italy-Tunisia delimitation may be compared with the Italy-Greece Agreement in that it also appears, from an examination of *Map 15*, to be related to a major geomorphological feature: the Rift Zone. The delimitation line runs down the Rift Zone from about the centre of the Pantelleria Trough to the southern edge of the Linosa Trough (allowing for the Lampedusa, Lampione and Linosa enclaves).

9.52 As to the treatment of the Islands of Pantelleria, Lampedusa, Linosa and Lampione, on the Tunisian side of what would otherwise constitute a median line, the boundary of the three larger islands was fixed at 13 miles from their coasts and that of the smallest, Lampione, at 12 miles, thus creating areas of partial enclave in the Tunisian shelf. This solution clearly reflects the fact that these islands are very small. But a second consideration may have played a role here as well. During the oral proceedings on its application to intervene in the *Tunisia/Libya* case, Counsel for Malta reported that the Italian position in discussions with Malta on the Pelagian Islands was that enclaving them on the west was appropriate since they rest on "the extension seawards of the Tunisian landmass" but that, as between Malta and the islands, equidistance should govern[3]. This suggests that the Pelagian Islands and Pantelleria may have been considered to be on a part of the continental shelf which is physically the natural prolongation of Tunisia, and physically separated from Sicily by the Rift Zone. In this regard it may be noted that the IBCM places Lampedusa and Lampione, which unlike Linosa and Pantelleria are not volcanic in origin, on what is called the "Tunisian Plateau".

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[1] *Atlante dei Confini Sottomarini, op. cit.*, pp. 79-83. (A copy of these pages is attached as *Annex 103*.) The Agreement entered into force on 6 December 1978. Libya has already reserved its position as to this Agreement.

[2] See Article I of the Agreement in *Annex 103*.

[3] Presentation of Mr. E. Lauterpacht, Q.C., at the Oral Hearings in the *Tunisia/Libya* case, Request by Malta to Intervene, Thursday, 19 March 1981, morning session.

9.53 The last delimitation situation pertinent to this case is, of course, that contemplated by the Court's 1982 Judgment in the *Tunisia/Libya* case. Although an agreement between Tunisia and Libya applying the Judgment has not, at the time of filing this Memorial, been entered into, the Court was quite specific as to the course the line of delimitation should take[1]. For purposes of illustration, the Court indicated the approach by which the line was to be established on "Map No. 3" to the 1982 Judgment. A copy of this map may be found in *Annex 106* to this Memorial.

9.54 This completes the description of existing delimitation situtations in the Central Mediterranean. There does exist, however, what Counsel for Malta described during the intervention proceedings in the *Tunisia/Libya* case as "a kind of *de facto* continental shelf boundary[2]" between Malta and Italy. This reference is to the fact that in the area between Sicily and Malta, Italy and Malta have apparently granted concessions up to within 500 metres of a median line between Malta and Sicily, by virtue of an arrangement that dates back to 1970[2].

9.55 As mentioned above, the matter of delimitations with third States was taken up by Malta in the intervention proceedings in the *Tunisia/Libya* case during which Counsel for Malta displayed a map before the Court for illustrative purposes[3]. The overlay to *Map 14* depicts Malta's claim to continental shelf rights as was shown on the map presented in Court. By examining this map, the relationship of Malta's claim to other delimitations in the area stands out clearly.

9.56 It was stated by Counsel for Malta during the intervention proceedings that Malta claims an equidistance line with each of the States with which it is involved in a delimitation of the continental shelf, with one exception. Malta would propose to enclave the Pelagian Islands on the Maltese side as well. If these lines of delimitation as proposed by Malta are placed on the map used before the Court, on the east the proposed equidistance line with Libya would extend far into the Ionian Sea. On the west, the Malta claim is seen to run along a line from the Lampedusa enclave southeast to a point which is equidistant between Malta, Libya and Tunisia. It would also fall well to the west of the southernmost portion of the Italy-Tunisia line of delimitation, which is seen to continue southeastward to point 32.

9.57 What stands out from an examination of Malta's position, as revealed so far, is the following. In the east, it involves a claim to a vast area of shelf, extending far into areas that lie between Libya and third States. In the west, it is inconsistent with portions of the 1971 Italy-Tunisia Agreement. And, in the south, it involves a potential conflict with the Tunisian/Libyan delimitation which should follow from the Court's 1982 Judgment. These are difficulties and they all stem, basically, from the fact that what Malta seeks is inequitable.

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[1] The Court noted, however, that the extent of the delimitation line between Tunisia and Libya would depend on delimitations ultimately agreed with third States on the other side of the Pelagian Sea. See *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 91, para. 130.

[2] Presentation by Mr. E. Lauterpacht, Q.C., at the Oral Hearings in the *Tunisia/Libya* case, Request by Malta to Intervene, Thursday, 19 March 1981, morning session.

[3] A reproduction of this map is attached as *Annex 104*.

9.58 In contrast, the alternative proposed by Libya, namely a boundary within the Rift Zone, encounters none of these difficulties. This is illustrated by the fact that if the second sector of the line of delimitation arrived at in applying the 1982 Judgment were extended northeastward on the 52° bearing to where it intersects with the Rift Zone, it would pass just to the southeast of point 32 of the line of delimitation between Italy and Tunisia. On the east, the Libyan proposal leaves open the possibility for a delimitation between Libya and third States.

9.59 The inequitable result that would stem from the Maltese claim, on both the east and the west, seems to result primarily from two factors: *first*, the automatic application by Malta of equidistance as the method of delimitation seemingly ignoring the geographic fact that other States abut on the same area and the other relevant circumstances of the area; and, *second*, the failure to take into account the vast differences in size of coastal lengths between neighbouring States and Malta. At the same time, Malta appears to be ready to take into account the small size of other islands, for it would not grant equidistance to the Italian Pelagian Islands but would enclave them instead.

9.60 A final point remains to be made. In the confines of the Mediterranean and in particular in the Central Mediterranean, if delimitation by equidistance were a panacea, one would have expected delimitation agreements on the basis of equidistance to have been rapidly completed. This has not been the case. Indeed, in neither the *Tunisia/Libya* case nor with respect to significant portions of the Italy/Tunisia agreement has equidistance been applied. And yet, where equidistance in a given case is perceived by two States as providing an acceptable solution and presumably therefore an equitable one, agreement is a relatively easy process. Where, however, as in the Mediterranean, the relevant circumstances are not reflected by equidistance, the achieving of delimitation agreements becomes a far more complex task, not surprisingly in some cases calling for the Court's assistance.

Conclusions

9.61 Four groups of relevant circumstances have been singled out above for particular attention in this case. The first group, relating to the physical factors of geomorphology and geology, was examined in the context of establishing in this case a separation of the natural prolongations of the Parties and hence the basis for entitlement to areas of continental shelf of each Party. These factors were also discussed, as they were in paragraphs 68 and 80 of the 1982 Judgment, in the context of being relevant circumstances.

9.62 Alongside the physical factors of geomorphology and geology, this Chapter has given particular attention to the geographical circumstances of the case, and in doing so has attempted to reflect the views of the Court expressed in paragraph 76 of the 1982 Judgment, which referred back to its 1969 Judgment. Hence the broader geographical setting of this case in the Mediterranean Sea, and the narrower geographical focus within the Central Mediterranean of the comparative size and lengths of coasts of Libya and Malta in the context of the distances involved, have been fully analysed because of their relevance as circumstances having a direct bearing on achieving an equitable result.

9.63 The conduct of the Parties has also been examined, and certain points relevant to reaching an equitable result have been identified. Finally, the factor of delimitations with other States in the region, arising as it does out of the geographical circumstances of the case, has been dealt with, a factor that is quite evidently a relevant circumstance of this case.

9.64 The conclusion that emerges from the examination of the various relevant circumstances is clear. They all either support, or are compatible with, the view that an equitable result would be achieved by a delimitation within the Rift Zone out to the southern part of the Sicily-Malta Escarpment in the vicinity of the Heron Valley.

CHAPTER 10

THE ACHIEVEMENT OF AN EQUITABLE RESULT

A. Reflection of the Physical Factors of Natural Prolongation and the Relevant Circumstances

10.01 As the previous Chapter has shown, a delimitation within the Rift Zone would give due weight to the relevant circumstances and would therefore be in accordance with equitable principles. In this particular case, the physical factors of geomorphology and geology merit special weight because these factors indicate a division between the natural prolongations of Malta and Libya along the Rift Zone. Entitlement to continental shelf can therefore be determined on the basis of natural prolongation. However, Libya's case does not rest on this principle alone. For a boundary within the Rift Zone, reflecting the fact of natural prolongation, also reflects the other circumstances relevant to this case.

10.02 Foremost amongst the other relevant circumstances are those of a geographic character. In particular, the relationship of and contrast between the two relevant coasts of the Parties are most important geographic circumstances. As the Court of Arbitration stated in the *Anglo-French Arbitration*, "[a] State's continental shelf, being the natural prolongation under the sea of its territory, must in large measure reflect the configuration of its coasts[1]."

10.03 The difficulty here arises, of course, from the need to find some basis of comparison between a small island group with coasts facing in many different directions and a continental State with a very large land-mass and an extensive coast that faces generally northward. However, whether the entire Libyan coast from the Tunisian border to the Egyptian border is examined and compared with the entire Maltese coast measured around the Islands; or, more realistically, the Libyan coast fronting on the Pelagian Sea — that is from Ras Ajdir to Ras Zarrouq — is compared with the south-facing coasts of the Maltese Islands, the result is roughly the same: a ratio of at least 8 to 1 in favour of Libya. While the element of proportionality under these circumstances will be left to Section B below, what can be said here is that this situation is exactly that contemplated by the Court in its 1969 Judgment, when it said:

> "Equity does not necessarily imply equality. There can never be any question of completely refashioning nature, and equity does not require that a State without access to the sea should be allotted

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[1] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 60, para. 100.

> an area of continental shelf, ***any more than there could be a question of rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline***[1]."

10.04 The attempt to use equidistance is precisely an attempt to equate the two coasts. In fact, there is no equality between the two coasts, or the two landmasses. But a boundary reflecting the ratio of coastal lengths of about 8 to 1 would end up within the boundary zone derived from the division of the natural prolongations of each Party in this case, that is within the Rift Zone between Libya and Malta.

10.05 The other relevant circumstances of a geographical character lead to or are fully consistent with such a boundary. The Mediterranean Sea is bordered by many continental States and dotted with many islands. When the claimant is a very small island, it must be fully prepared to consider the rights and claims of its much larger neighbours. Refashioning of nature cannot be based on the use of such a method of delimitation as equidistance, which ignores the relevant circumstances including geography itself.

B. The Test of Proportionality

10.06 In Chapter 6 of this Memorial the role of proportionality as a fundamental ingredient in determining whether a resulting delimitation is reasonable was discussed. As this Court has made clear, it is the result that is important, and the result must be found to be equitable under the relevant circumstances of the case. Thus it is that there is no accepted method of delimitation whose automatic application is deemed to produce an equitable line of delimitation in every case[2]. To the contrary, the method is subordinate to the result. And as the result must be equitable under the relevant circumstances of the case, one basic test of such a result is that it not be disproportionate in light of the relationship between the relevant coasts. It is, therefore, to the test of proportionality that this discussion now turns.

10.07 The test of proportionality postulates two conditions: selection of the relevant coasts and selection of the relevant area. The definition of the "relevant area" for purposes of testing proportionality, however, should not be confounded with the description of an "area of dispute". The "relevant area" in the present context is obviously an area more extensive than any objective "area of dispute", although the former may include the latter. As the Court itself had occasion to note in its 1982 Judgment, it is the area of sea-bed up to the low-water mark of each of the

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[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, pp. 49-50, para. 91. [Italics added.]

[2] See Chapter 7 above.

Parties that is to be compared for purposes of proportionality[1]. Quite obviously, areas lying within a Party's territorial waters could not realistically be considered as constituting "areas of dispute" between them, but they may still form part of the "relevant area". These two separate conditions — the selection of relevant coasts and relevant area — will be taken up separately below.

1. Relevant Coasts

(a) Libya

10.08 In identifying the relevant coasts, appropriate criteria must be applied in order to determine which parts of the respective coasts of the Parties may be taken into account. Obviously, neither the whole Mediterranean coast of Libya nor the whole coast around Malta may be considered relevant for judging the equitableness of a continental shelf delimitation between Libya and Malta; only those parts of their coastal fronts or facades may reasonably be taken into consideration which face the maritime area between the Parties and may, as such, constitute a basis for generating a natural prolongation into that area. Reference may be made in this context to the following passage in the 1982 Judgment, where the Court explained its reasons for selecting the relevant coastal fronts for the purposes of delimitation:

> "Nevertheless, for the purpose of shelf delimitation between the Parties, it is not the whole of the coast of each Party which can be taken into account; the submarine extension of any part of the coast of one Party which, because of its geographic situation, cannot overlap with the extension of the coast of the other, is to be excluded from further consideration by the Court. It is clear from the map that there comes a point on the coast of each of the two Parties beyond which the coast in question no longer has a relationship with the coast of the other Party relevant for submarine delimitation. The sea-bed areas off the coast beyond that point cannot therefore constitute an area of overlap of the extensions of the territories of the two Parties, and are therefore not relevant to the delimitation[2]."

10.09 On the Libyan side, the coastal front which may reasonably be regarded as relevant for the delimitation between the Parties terminates at Ras Zarrouq, because it is only that part of Libya's coast which runs from Ras Ajdir to Ras Zarrouq which faces the maritime area between the Parties. Beyond Ras Zarrouq the Libyan coast faces maritime areas which will be relevant for delimitation vis-à-vis other States, but under no circumstances vis-à-vis Malta. This length of Libyan coast between Ras Ajdir and Ras Zarrouq stretches for a distance of some 400 kilometres in all, or about 350 kilometres measured in a straight line[1].

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[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 76, para. 104.

[2] *Ibid.*, pp. 61-62, para. 75.

(b) Malta

10.10 On the Maltese side, the identification of the relevant coast raises more complex problems. While the north-facing coasts of Gozo and of the Island of Malta proper can clearly be eliminated, it remains debatable to what extent the remaining coasts of both islands are relevant for the delimitation vis-à-vis Libya. It is clear from *Map 16* that those parts of the Island of Malta which face southward on to the maritime area between Malta and Libya are certainly relevant. They start from the most easterly point of this coast, Delimara Point, and terminate to the west at the promontory at Ras Il-Qaws, where the coast turns again to the north. The length of this coast is about 21 kilometres along a straight line. With respect to the rest of the southwest- and west- facing parts of the Island of Malta and the coast of Gozo (except perhaps from Ras in-Newhela to Ras il-Wardija on Gozo, a distance of some 7.3 kilometres), it is difficult to perceive how they can be regarded as relevant for the delimitation of the maritime areas vis-à-vis Libya. In fact, they have been cited as the basis for continental shelf claims against Tunisia and Italy by Malta in its oral pleadings while seeking permission to intervene in the *Tunisia/Libya* case. Thus, Libya sees no sufficiently cogent reason to regard those parts of the Island of Malta's and Gozo's coasts as relevant for the proportionality test.

10.11 If one compares the total length of the relevant coastal fronts on both sides, measured by straight lines between the respective western and eastern end-points on the Island of Malta and on Gozo indicated above, the Malta-Gozo coastal fronts would total some 28.3 kilometres (Ras il-Qaws to Delimara Point and Ras in-Newhela to Ras il-Wardija) compared to Libya's total coastal front of 350 kilometres (Ras Ajdir to Ras Zarrouq). The resulting ratio would be approximately 1:12. This ratio is to be contrasted with the ratio of about 1:8 that would obtain if the same Libyan coastal front was to be compared with a single straight line drawn between the westernmost point on Gozo and the easternmost point on the Island of Malta (Delimara Point)[2].

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[1] For ease of reference, the place names discussed in these paragraphs have been placed on a bathymetric chart appearing as *Map 16*.

[2] See, *e.g.*, the discussion at para. 9.18 above, where only a broad comparison was being made between the coasts.

2. Relevant Area[1]

10.12 In order to apply the test of proportionality, a ratio of somewhere between 1:12 and 1:8 must therefore be applied to a "relevant area" to see how the areas of shelf that would attach to each Party applying such a ratio correlate with the division of areas between the Parties under the boundary zone which Libya has proposed. In Libya's view, two criteria assist in determining what constitutes the relevant area in this case. These are, *first*, that the relevant area must start from the respective end-points of the relevant coasts or coastal fronts of both Parties, and *second*, that the area should include those maritime areas that may objectively be claimed by each of the Parties on the basis of their coastal fronts.

10.13 The relevant coasts, or rather, their end-points, have been indicated in Section 1 above. On the Libyan coast the land frontier with Tunisia at Ras Ajdir would be one such end-point on the west, and Ras Zarrouq would be the other on the east. As for Malta, if the broad coastal front approach discussed in paragraph 9.16 above is taken for purposes of determining the relevant area, the respective end-points would be Ras il-Wardija on Gozo on the west and Delimara Point on the Island of Malta on the east.

10.14 For purposes of establishing a lateral limit to the area on both the east and west, however, it is not enough simply to draw one straight line between Ras Zarrouq and Delimara Point and another between Ras Ajdir and Ras il-Wardija. For, on the east, this would have the effect of overly restricting the "relevant area" and thus would not take appropriate account of the second criterion mentioned above, that is the criterion that the relevant area should include those areas of sea-bed that may, reasonably, be claimed by each of the Parties[2]. On the west, a straight line would appear to be inconsistent with the method of delimitation determined by the Court in the *Tunisia/Libya* case because it would cross to the west of the line of delimitation between those States as it appears on the Court's illustrative "Map No. 3" to that case[3].

10.15 It is important to recall that, in taking into consideration the element of proportionality as a test of the equity of the result, neither "nice calculations" nor precise mathematical relationships are involved.

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[1] Reference may be made to para. 10.07 in this regard in order to distinguish the "relevant area" from the "area of dispute".

[2] For example, an area so limited on the east would not include all of the areas covered by concessions granted by the Parties.

[3] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 90.

Rather, an area is postulated for illustrative purposes. As the Court noted in its 1982 Judgment, what are being dealt with are not "absolute areas", but "proportions[1]". The Court observed:

> "Indeed, if it were not possible to base calculations of proportionality upon hypotheses of this kind, it is difficult to see how any two States could agree on a bilateral delimitation as being equitable until all the other delimitations in the area had been effected[2]."

10.16 With this caveat in mind, lateral limits to the relevant area can be postulated as follows: on the east, it has been shown that the Sicily-Malta Escarpment forms the limit of the Ragusa-Malta Plateau and, thus, of the natural prolongation east of Malta. A line drawn from Delimara Point on the Island of Malta due east to its intersection with the Sicily-Malta Escarpment could therefore reasonably form the northern boundary of the relevant area. This Escarpment continues to the south to the vicinity of the Heron Valley (also visible on *Map 16*), where the Rift Zone joins from the west. From this point, the eastern boundary of the Pelagian Block follows south along the Medina Escarpment and the Medina-Misratah Fault Zone. It is reasonable, therefore, to draw a line from the point of intersection with the Sicily-Malta Escarpment mentioned above, southward along that Escarpment to the Heron Valley. From the Heron Valley, a line could be drawn south along the Medina Escarpment and the Medina-Malta Fault Zone to Ras Zarrouq on the Libyan coast and by this line complete the eastern limits to the relevant area.

10.17 On the west it is possible to start with a boundary drawn from Ras Ajdir along the line indicated by the Court's illustrative "Map No. 3" included in the 1982 Judgment. It may be seen from *Map 16* that the western limit to the relevant area could be completed, again for purposes of illustration only, by constructing a line from Ras Ajdir, taking account of the Court's 1982 Judgment, to the western end-point on the Island of Gozo, that is Ras il-Wardija.

10.18 It remains to examine whether a boundary that falls within the Rift Zone would meet the test of proportionality in the light of the ratios between the lengths of the coasts of the Parties discussed above. For purposes of illustration, the general extent of the Rift Zone has been superimposed on a bathymetric map (*Map 17* following page 160) which includes the relevant area as defined above. As the overlay to *Map 17* demonstrates, it is evident that a boundary within the Rift Zone would leave to each of the Parties areas of shelf within the relevant area that bear a ratio to each other of between 1:8 and about 1:12. The precise ratio would depend, of course, on where the line is drawn, a task for the Parties to undertake in accordance with the Court's decision in implementing Article III of the Special Agreement to "enter into negotiations for determining the area of their respective continental shelves." Accordingly, the result that would be achieved by a line of delimitation within the Rift Zone, as defined above, clearly meets the test of proportionality.

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[1] See *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 93-94, paras. 101(C)(2) and (3) [*dispositif*].

[2] *Ibid.*, p. 91, para. 130.

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This Memorial has sought to marshal facts and formulate issues with an economy that is intended to provide a focus for the Court's deliberations within the framework envisaged by the Special Agreement—without engaging in an excess of anticipatory rebuttal of unpredictable contentions—while at the same time stressing the preponderant considerations of fact and law that, in the view of Libya, lead to and justify its Submissions. Libya reserves the right to supplement these considerations and its Submissions in the light of Malta's pleadings and the future development of the issues between the Parties during the course of the proceedings.

SUBMISSIONS

SUBMISSIONS

In view of the facts and arguments set forth in the preceding parts of this Memorial;

Considering that the Special Agreement between the Parties requests the Court to decide "what principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic, and how in practice such principles and rules can be applied by the two Parties in this particular case in order that they may without difficulty delimit such areas by an agreement" in accordance with the Judgment of the Court:

May it please the Court, rejecting all contrary claims and submissions, To adjudge and declare as follows:

1. The delimitation is to be effected by agreement in accordance with equitable principles and taking account of all relevant circumstances in order to achieve an equitable result.

2. The natural prolongation of the respective land territories of the Parties into and under the sea is the basis of title to the areas of continental shelf which appertain to each of them.

3. The delimitation should be accomplished in such a way as to leave as much as possible to each Party all areas of continental shelf that constitute the natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the other.

4. A criterion for delimitation of continental shelf areas in the present case can be derived from the principle of natural prolongation because there exists a fundamental discontinuity in the sea-bed and subsoil which divides the areas of continental shelf into two distinct natural prolongations extending from the land territories of the respective Parties.

5. Equitable principles do not require that a State possessing a restricted coastline be treated as if it possessed an extensive coastline.

6. In the particular geographical situation of this case, the application of equitable principles requires that the delimitation should take account of the significant difference in lengths of the respective coastlines which face the area in which the delimitation is to be effected.

7. The delimitation in this case should reflect the element of a reasonable degree of proportionality which a delimitation carried

out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the respective States and the lengths of the relevant parts of their coasts, account being taken of any other delimitations between States in the same region.

8. Application of the equidistance method is not obligatory, and its application in the particular circumstances of this case would not lead to an equitable result.

9. The principles and rules of international law can in practice be applied by the Parties so as to achieve an equitable result, taking account of the physical factors and all the other relevant circumstances of this case, by agreement on a delimitation within, and following the general direction of, the Rift Zone as defined in this Memorial.

(Signed) ______________________

ABDELRAZEG EL-MURTADI SULEIMAN
Agent of the Socialist People's
Libyan Arab Jamahiriya

TECHNICAL ANNEX TO THE MEMORIAL OF THE LIBYAN ARAB JAMAHIRIYA

THE GEOMORPHOLOGICAL AND GEOLOGICAL SETTING

(Scientific Facts)

INTRODUCTION—LIST OF SCIENTIFIC ADVISERS

The scientific portions of the Memorial have been prepared with the assistance of independent scientific and technical experts with a specific knowledge of the Central Mediterranean and North Africa within their fields of specialisation. Those who have prepared or contributed to specific papers in this *Technical Annex* are listed below:

- Professor Frank H. Fabricius, Professor of Geology, Director of the Marine Geological and Sedimentological Division at the Institute of Geology and Mineralogy, Technical University, Munich, Germany. [Member, Editorial Board, International Bathymetric Chart of the Mediterranean Sea.]
- Professor Icilio R. Finetti, Institute of Geodesy and Geophysics, University of Trieste, Italy.
- Professor J.E. van Hinte, Free University, Amsterdam, The Netherlands.
- Dr. D. Jongsma, Free University, Amsterdam, The Netherlands.
- Dr. J.M. Woodside, Lyngby Geophysical Services, 46 Lyngby Avenue, Dartmouth, Nova Scotia, Canada.

The papers contained in this *Technical Annex* identify the source of these papers or summaries and in each case have been approved by their sources.

The Sea-Bed Model provided to the Court has been prepared by the Lamont-Doherty Geological Observatory by Thérèse Landry and Mary Ann Luckman under the supervision of Dr. W.B.F. Ryan.

The maps appearing in the main body of the Memorial have been prepared by the Department of Cartographic Services of the University of Maryland Baltimore County under the direction of Scott B. Edmonds, Director of Cartographic Services.

PART I

GEOMORPHOLOGY OF THE SEA-BED AREA BETWEEN LIBYA AND MALTA

Professor Frank Fabricius

1. Source of Data: The International Bathymetric Chart of the Mediterranean ("IBCM")[1]

A. *Introduction*

The IBCM has been prepared by an Intergovernmental Oceanographic Commission made up of an international group of experts whose names appear on the Chart. It became publicly available during 1982. The IBCM is sometimes referred to also as the "UNESCO Mediterranean Chart" since the project was undertaken under the aegis of UNESCO. Certain brief comments regarding the background, objectives and technical details of the IBCM are set forth below based on the personal knowledge of the author of these comments as a member of the group of experts and of the Board of Editors of the IBCM.

B. *Background*

The need for a modern chart of the sea bottom features of the Mediterranean became increasingly noted by the scientific community during the 1960s and 1970s. The then existent charts were based on nautical charts prepared by the various national hydrographic offices. There was lack of uniformity and precision. Their scale was not adequate to meet the needs of science.

A step in the direction of an improved chart of the Mediterranean came with the "Pfannenstiel Charts" constructed and edited principally by G. Giermann in the late 1950s and early 1960s under the supervision of the late Professor Max Pfannenstiel. The Mediterranean bathymetric chart prepared by the United States Defense Mapping Agency appeared shortly thereafter. An important breakthrough was made with the publication in the 1970s by Morelli and a group of Italian geophysicists at Trieste of a new bathymetric chart (scale 1:750,000) based mainly on continuous sounding tracks. Although the coverage was far from homogeneous, high precision was achieved on this chart in areas near the Italian mainland and in the Western Mediterranean.

In the early 1970s Professor H. Closs, a geophysicist at Hannover (Federal Republic of Germany) and at the time President of the Marine Geological and Geophysical Commission of the International Commission

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⑪ [1] Sheet 8 of the IBCM, covering the area of the Central Mediterranean, has been reproduced in somewhat reduced form and may be found in the pocket section of Volume III. It also appears as *Map 2* in the Memorial facing p. 16 in a more substantially reduced version.

for the Scientific Exploration of the Mediterranean Sea, initiated preparation of a new bathymetric chart of the Mediterranean. This was to be carried out under the framework of the CIM (Coopération Internationale Méditerranéenne) and under the auspices of UNESCO.

Scientific responsibility for the project was given to an international group of experts (listed on the IBCM) from France, Germany, Greece, Italy, Turkey, the United Kingdom and the Soviet Union. Final editing and printing was placed under the coordination of Dr. Faleev of Leningrad, who was assisted by an international Board of Editors.

C. *Technical Aspects of the IBCM*

It was the intention from the outset that this new bathymetric chart should be based on the most up-to-date information including (for the first time) the surrounding landmass at the same scale (1:1,000,000) and projection (Mercator). It was decided to restrict information coming from official national nautical charts to the shelf area (in this case limited by the 200-metre isobath). Information covering deeper areas was to come from high precision echo sounding (mainly continuous tracks) including reflection seismic profiles. Positioning had to be by satellite, LORAN-C, or some other method of comparable accuracy.

The original data were provided by a large number of international organisations, institutions and scientists (see legend on the IBCM) and consisted of original echograms and digitized computer information. Most of the data came from scientific cruises. The raw data were corrected using the Matthews Tables.

⑪ The IBCM consists of 10 sheets on Mercator projection at a scale of 1:1,000,000 at 38°N. It was prepared from 91 sheets (scale 1:250,000) constructed from track sheets and plotting sheets both at the same scale. These original sheets are now archived at the International Hydrographic Bureau, Monaco, and can be obtained on request.

D. *Nomenclature*

Names given to sea-bed features were based on the GEBCO Scheme (General Bathymetric Chart of the Oceans), also a UNESCO activity. In waters subject to exclusive national jurisdiction, names used by the authorities or scientists of that State were chosen. In other areas, the most widely accepted names found in scientific publications were sought for use.

2. Graphic Representation of the Sea-Bed Area[1]

A. *Introduction*

A geomorphological analysis has been made of the features of the sea-bed of the Central Mediterranean Sea up to line of longitude 17°E based on the IBCM, and in particular Sheet No. 8 (found in the pocket section of Volume III). A slope map (the "Slope Map") has been constructed on the basis of this map data to portray the form of the sea-bed and the characteristics of its features in a manner more understandable to persons not expert in reading bathymetric charts. The names of features have been taken from the IBCM. The Slope Map will be discussed in detail below. (A very much reduced copy of the Slope Map appears as *Figure 1* opposite page 30 of the Memorial. A somewhat reduced copy may be found in the pocket section of Volume III).

B. *Slope Map*

The Slope Map is a graphical "translation" of the data of the sea floor inclination found on the IBCM, Sheet No. 8. Its aim is to illustrate by graphic means:

(a) the relief of the sea floor[2], its flatness, gradual inclination and steepness (*e.g.*, escarpments); and

(b) the direction of inclination, that is the direction perpendicular to the isobaths of the IBCM.

⑪ The scale of the originally-prepared Slope Map was identical to the scale of the appropriate area on the IBCM, Sheet No. 8. Although the copy in the pocket section of Volume III has necessarily been reduced, nevertheless one can relate all topographic names and morphological features on the IBCM to the particular patterns of the Slope Map.

The legend on the Slope Map and the following paragraphs explain the manner in which the relief and direction of inclination of slopes is indicated. The inclination of slope was computed separately for each area of the IBCM Sheet No. 8, where the distances between adjacent isobaths (= value of local slope) was within the chosen scale.

For a better understanding, the value of inclination was not given in angular degrees (°), minutes (′) and seconds (″) but in distance (metre) per 1 metre of waterdepth (*e.g.*, 1:10 means: the sea floor drops 1 metre at an interval of 10 metres.)

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[1] The sea-bed area covered graphically, as discussed below, and described verbally in 3. below, includes portions of the sea floor extending beyond the Pelagian Sea as such.

[2] The area near the Tunisian coast (*i.e.*, off Djerba, the Gulf of Gabes and the Kerkennah Islands up to the Gulf of Hammamet) was only schematised.

Seven steps of sea floor inclination were selected:

	Range in distance per 1 metre descent	(Range: equivalent in degrees, etc.)
		(approximately)
(1)	1-5	(45° to about 11°)
(2)	5-10	(11°-5°)
(3)	10-20	(5°-2°51′)
(4)	20-40	(2° 51′-1°25′)
(5)	40-80	(1° 25′-0°42′)
(6)	80-160	(0° 42′-0°21.5′)
(7)	> 160	(less than 0°21.5′)

White areas of sea-bed without any pattern indicate areas not covered; land areas are indicated as shown on the legend.

Separated basins (*e.g.*, the limited abyssal plains of the Malta, Pantelleria and Linosa Troughs and others) are contoured by the relative pattern of the surrounding sea floor enclosing the basin. Shoals, banks, sea hills and other elevations are marked by "H"[1].

3. Word Description of the Sea-Bed Area

To supplement the graphic representation of this area of sea-bed by the Slope Map, a brief verbal description follows. It may be followed by ⑪ consulting the Slope Map and the IBCM.

A. *Introduction*

Viewed in a geomorphological sense (and not as coextensive with the geological entity known as the African Plate), the Pelagian Block extends on the east to the line of escarpments and fault zone defined, from north to south, by the Sicily-Malta Escarpment, the Medina Escarpment, and the Medina-Misratah Fault Zone. The northern limits of the Block are defined in the Libyan Memorial as created by the Rift Zone running from the Strait of Tunis, across the Pantelleria, Linosa and Malta Troughs and the Malta and Medina Channels to the Heron Valley from where the Rift Zone links up in the Ionian Sea with the Medina (Malta) Ridge. Other definitions adopted by some scientists place the northern boundary of the Pelagian Block along the African plate boundary running across Sicily or make the Block coextensive with the Pelagian Sea extending as far north as the Sicilian coastline. The choice of definition may depend on whether one wishes to emphasise the geomorphological or the geological aspects of this feature. However, it is not necessary to engage in any controversy as to definition here for, from both a geomorphological and a geological point of view, the Rift Zone is of great importance whether or not one chooses to say it constitutes the northern limits of the Pelagian Block.

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[1] Dashed arrows have been used to help the eye find the general direction of the slope and in some cases to indicate the deepest part of a submarine valley, trough or depression.

Compared to other areas of the Mediterranean, the sea-bed of the Pelagian Sea is considerably shallower than the level of the surrounding basins. As a rough estimate, almost half of the area of the Pelagian sea-bed lies at a water depth of less than 200 metres[1]. The remainder of this sea-bed consists largely of an almost flat and smooth seafloor, still only slightly inclined to the east — the easterly component of inclination is about 1:400 — with water depths generally above 600 metres. It is only when the Rift Zone is reached that areas are found where the water depth exceeds the 1,000 metre isobath.

The block-like character of the sea-bed underlying the Pelagian Sea is especially emphasised by the steep escarpments to the east, forming a natural border to the Ionian Basin and the Sirt Basin (or Rise), which contain abyssal plains almost 4,200 metres in depth.

Through the strait between Cape Bon (Tunisia) and Marsala (Sicily/Italy), the Pelagian Sea is connected to the southern part of the Tyrrhenian Sea with its basinal depth of below 3,000 metres.

In the description that follows, the sea-bed will be divided into a Southern Unit and a Northern Unit, the dividing line between Units being the Rift Zone, which will be the third area described. The Rift Zone formed by the Troughs and Channels mentioned above, from its western end between the Adventure Bank and Cape Bon all the way to the eastern edge of the Pelagian Block at the Heron Valley, is tectonically a major Rift Zone. The Troughs and Channels are structural *grabens*; the heights, shoals and banks within the Zone are either structural *horsts* or volcanoes.

This Rift Zone is often called the "Strait of Sicily" although it is not technically a "strait" in an oceanographic sense. The narrow passage between Cape Bon and Marsala (Sicily) is often called the "Strait of Tunis".

B. *The Southern Unit*

It will be recalled that during the oral hearings of the *Tunisia/Libya* case I had the honour of testifying before the Court as an expert and, among other things, describing the bottom of the sea off the part of the Libyan and Tunisian coast in question of interest to the Court in that case — that is, roughly to the west of the 13°E line of longitude. At that time, with the use of slope and block diagrams, I testified that the sea-bed in this area was very gentle indeed and devoid of significant geomorphological features. I even suggested that the sea-bottom here was about like the topography between Amsterdam and The Hague.

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[1] In this area of shallow sea-bed the easterly inclination is only 1:1,000 to 1:2,000.

The case now before the Court involves shelf areas to the east of 13°E longitude and, accordingly, I have made studies of this sea-bed further to the east. What follows is a rather detailed geomorphological description of this area.

If the shelf area north of the Libyan coast at approximately 14° 30′ E longitude (or roughly due south of the Maltese Islands) is selected, what would a journey across this sea-bed reveal? The total distance from this point on the Libyan coast to a point on the Melita Bank defined by the 200-metre isobath is 109 nautical miles. The maximum depth reached across this line would be about 610 meters. A general description of the journey would be this.

From the Libyan coast to the 100 metre isobath, a distance of 9.7 nautical miles, the sea bottom slopes down in a northerly direction at an inclination of only 1:179 (0° 10′). To the 200 metre isobath, a distance of another 8.3 nautical miles along the sea bottom, the inclination is only slightly greater (mean value 1:83 or 0°41′). A very gentle undulation running parallel to the coast is crossed during this part of the journey. Further north for another 8.8 nautical miles until the 400 metre isobath is reached, the slope shows an inclination of only 1:82 (0°42′). From here to the 600 metre isobath (now a distance of about 37.8 nautical miles from the Libyan coast) the slope is inclined at a value of 1:95 (0°36′). At this water depth is found the bottom of the depression, the "Gabes-Tripoli-Misratah Depression" (which the Court called the "Tripolitanian Furrow" in the 1982 Judgment). Looking back towards the Libyan coast, the mean value of slope inclination is not more than 1:144 (or 0°30′), which is but half of a degree. This degree of inclination is virtually invisible.

The bottom of this depression, the "Gabes-Tripoli-Misratah Depression", is a smooth and slightly undulating plain, showing widely separated lows and highs reaching perhaps some 30 metres above or below the 600 metre isobath. The "thalweg" of the so-called "Tripolitanian Valley" (the ⑪ feature named on the IBCM) should be crossed at a distance of about 51 nautical miles from the coast of Libya, but is so flat that it probably could not be detected by the eye. Thus, it exists merely as a feature on the Chart.

Continuing from here northward for about 24 nautical miles along a flat sea floor with less relief than before, a distance of 74 nautical miles from the Libyan coast is reached. This is the deepest point on the journey along the line of 14°30′E longitude between Libya and the Melita Bank. From here, the slope rises very gradually up the Melita bank. Between the 600 and the 400 metre isobaths, the mean inclination of the sea floor is only 1:97 (0°35′), that is slightly more than half a degree. From here to the 200 metre isobath which defines the Melita Bank (at the crossing point of the meridian 14°30′), the inclination is only 1:208 (0°17′), or less than 1/3 of a degree.

A second examination of the sea-bed has been made further to the east. Taking the same south-to-north journey from the Libyan coast—but this time along the line of 15°E longitude (approximately 10 kilometres west of Misratah)—the following describes the floor of the sea.

At the outset, the sea floor slopes down rather uniformly. The 200 metre isobath is reached at a distance from the coast of 7.5 nautical miles, which is equivalent to a mean gradient of 1:69, or less than one degree. Further on, the slope continues, still dipping very gently—virtually invisibly—in a north to northeast direction. On this journey northward along the line of 15°E longitude the 400 metre and 600 metre isobaths are reached at distances from the Libyan coast of 15.1 nautical miles and 30 nautical miles respectively. In the direction of due north, the slope gradient decreases from 1:71 to 1:138, respectively.

At a distance from the coast of about 36 nautical miles, the first "thalweg" of a gentle depression is reached. From here on, the journey continues along the very wide and extended floor of the "Gabes-Tripoli-Misratah Depression".

The total mean gradient from the Libyan coast to the first "thalweg" of this depression is only 1:88 (0°39′), which is slightly more than half of a degree. Concerning the sea floor morphology of this slope, the seismic profiles and echographs do not show any relief of importance. At this point, the bottom of the "Gabes-Tripoli-Misratah Depression" is about 32 nautical miles across (measured from south to north) with a very smooth surface and very low relief.

⑪ At a distance from the Libyan coast of about 69 nautical miles, a gentle depression, called on the IBCM the "Misurata Valley", is crossed. From here on to the north, the sea floor rises gently with some very wide and shallow undulations. At a distance from the Libyan coast of about 100 nautical miles, the slope rises at a mean gradient of 1:160 (about 1/3°). From here on the journey continues on the shoals of the Melita/Medina Banks. Until the southwest corner of the 200-metre line which defines the Medina Bank, the gradient of the sea floor is only 1:241, equivalent to 0°14′.

To complete the picture of the sea-bed of the Southern Unit, one more descriptive journey seems necessary. This would be a journey along the sea bottom from the point of intersection of the line of longitude of Ras

Tajura (13° 23′E) and the parallel of 33° 30′N latitude. This time the descriptive journey is from west to east ending at the Medina-Misratah Fault Zone, 90 nautical miles to the east.

From the starting point of this west-east journey for about 17 nautical miles eastward to the "thalweg" of the "Tripolitanian Valley" (as named
⑪ by the IBCM) the gradient is 1:180 (or 0°19′06″). Proceeding due east, this "Valley" is crossed obliquely; therefore the maximum "steepness" of the flanks of this "Valley", measured perpendicularly to the direction of the "thalweg" (northwest/ southeast) is about 1:63 (0°54′34″).

From here eastward, a very gentle elevation (on the northern flank of the "thalweg") is encountered. The distance from the "thalweg" of the "Tripolitanian Valley" to this elevation is about 11 nautical miles. Thereafter, for a distance of 40 nautical miles on the way to the northern flank of the "Tripolitanian Valley" the gentle decline of the slope to the east is along a smooth sea-bed. The mean gradient of this part of the route measures only 1:370 (0°09′18″). Following on to the east, the 800 metre isobath is encountered after another 17 nautical miles. This is equivalent to a gradient, slightly steeper than before, of not more than 1:157 (0°21′54″). This increase of gradient is caused by the Medina-Misuratah Fault Zone which crosses here perpendicularly. From this point (800 metres) to the 1,000 metre isobath the distance is 24 nautical miles. On this part of the journey there is first a descent and then a rise up to an elevation of again 800 metres, situated about half way between the first 800 metre isobath and the 1,000 metre isobath. The slope from this "halfway elevation" to the 1,000 metre line (12 nautical miles) measures 1:110 (0°31′15″). It is in this section at roughly the line of longitude of Misratah that the Sirt Rise area of the Ionian Sea has been entered. The sea floor becomes more irregular and takes on quite different geomorphological characteristics.

The total length of the "Gabes-Tripoli-Misratah Depression" between the coast at Zarzis (Gulf of Gabes) and the above-mentioned intersection of the 33°30′N parallel with the 800 metre isobath (north of Misratah) is about 206 nautical miles. This is equivalent to a mean inclination of only 1:477 or about 0°7′13″, a virtually invisible slope.

As can be seen from the Slope Map and the foregoing description, the area off the Libyan coast of the Southern Unit is vast and featureless, showing only a very gentle sinking of the sea floor and forming a wide depression, the "Gabes-Tripoli-Misratah Depression". It embraces the northern coastal plain of Libya (the Jeffara Plain) and part of Tunisia. (The Libyan Memorial refers to this area as being part of the Pelagian Block.) Towards the east this depression widens considerably to where it reaches a width of 270 kilometres measured from north to south. Its easterly extension can be traced as far as the Sirt Rise. Between the meridians 15° and 16°E this "depression" is intersected by the Medina-Misratah Fault System, as has been discussed above.

Within the vocabulary of sea bottom features, it is difficult to find the appropriate term for this depression between Gabes and Misratah. In the west, where this depression is filled by a thick pile of sediments giving only little room for sea water, it could be called geologically a "basin" and geomorphologically only a "depression". As it continues to the east between longitude 13°E and 15°E, its elongated form suggests the appropriateness of "valley" or "trough", and yet its size and gentle contours seem to reject the appropriateness of terms such as "valley" or "trough" or "furrow" or "sillon" and to leave "depression" as the most accurate geomorphological description. In geological terms, "basin" is certainly appropriate.

⑪ On the IBCM, two features are shown merging into this depression from the west: the "Tripolitanian Valley" and the "Misurata Valley" (the latter being a continuation of the "Jarrafa Trough"). On the Slope Map these two "valleys" are hard to find. This is because of the flatness of the flanks of these "valleys". In addition, there are other "kinks" in the isobaths in this region, some of equal (though minor) importance with these two "valleys" shown on the IBCM. Such negligible features would never pass for "valleys" on the land. Nor would they be discerned if one were to cross the sea floor on foot.

If one compares these "valleys" with the Malta Channel and the Medina Channel on the Slope Map, for example, the latter are seen to have steeper slopes at their flanks than the two "valleys". This is particularly true north of the Medina Bank where the flank of the Medina Channel is quite steep (1:10-20 and in places even 1:5-10). The flank of the slope facing southwest from Gozo which drops off into the Malta Trough-Malta Channel is similarly quite steep (1:10-20 up to 1:5). In contrast, the slope inclinations of the "Tripolitanian Valley" (generally 1:80-160 or less, only rarely 1:40-80) and the "Misurata Valley" (similar) are far more gradual.

The Jarrafa Trough, situated at the north of this depression, is a shallow depression about 60 kilometres long and 15 kilometres wide. Even at its point of maximum depth of 447 metres it is only some 100 metres below the surrounding sea floor. Hence, this feature is of no morphological importance either.

North of this area of depression comprising the Jeffara Plain of Libya and the area of continental shelf to the north of the Libyan coast, is an area which, geologically, is a structural "high" and, geomorphologically, comprises two groups of banks known as the Melita Banks and the Medina Bank (still part of the Southern Unit). The Medina Bank (shallowest point 146 metres) and the Melita Banks (shallowest points 86 metres) are two extended shallow areas, separated from each other by a channel that does not exceed the 400 metre isobath (unnamed on the IBCM). These ⑪ banks are defined by the IBCM and most bathymetric charts by the 200 metre isobath but in more general terms these banks are part of a structural "high" extending from the Lampedusa Plateau on the west to the Medina Escarpment on the east. Large areas of this "high" appear above the 400 metre isobath. Its northern limit is formed by the Medina Chan- ⑪ nel. To the west, southwest and south, the IBCM shows as the bordering features the rather shallow Jaraffa Trough and its southeastern continuation, the system of the "Misurata Valley" and the "Melita Valley"—features which become more pronounced beyond the 1,000 metre isobath as a result of their junction with the Medina-Misratah Fault System, which forms the eastern edge of the Pelagian Block.

The Melita Banks consists of two shoals of a depth of 86 metres and 154 metres, respectively, just east of the centre of the Southern Unit being described here. Morphologically there are, just as in the case of the Medina Bank, no abrupt features at all to be found here—only very smooth elevations of the sea bottom. Especially on their southern slopes the gradients are very gentle. In contrast, the inclinations in a northerly direction are much steeper (which can be seen easily by the narrowing of ⑪ the isobaths of the IBCM to the north of the banks and on the Slope Map by the slope inclinations to the north of the elevations marked "H").

It is, as a matter of fact, very difficult to draw a dividing line between the northern flank of the area of depression called by the Court in its 1982 Judgment the "Tripolitanian Furrow" and the Melita or Medina Banks.

C. *The Northern Unit*

The sea floor off the generally southwest-facing coast of Sicily has three distinct regions. In the centre, it forms a relatively narrow shelf (about 15 to 24 kilometres wide) sloping in a south/southwest direction into the Gela Basin. On each end of this Basin rather extended shelves form large banks: the Adventure Bank on the west, and a large plateau, the Ragusa-Malta Plateau, on the east[1]. The Adventure Bank forms a large submarine promontory of the west end of Sicily, while the Ragusa-Malta Plateau can be understood as a promontory of the southeast corner of the Sicilian "triangle". Thus, Sicily and its southern and southwesterly shelf-prolongations, together with the area of the Gela Basin, form an even larger triangle, extending the Sicilian triangle considerably in a southwesterly direction, but keeping its essential shape.

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⑪ [1] It is called the "Malta Plateau" on the IBCM. For the sake of consistency, this note adopts the same terminology as the Memorial for this feature.

The Adventure Bank (comprising many separately named shoals and banks) extends about 90 kilometres in a southwest/northeast direction and an equal distance in a northwest-southeast direction. The Ragusa-Malta Plateau extends about 130 kilometres in a north/south direction and 70 to 100 kilometres in an east/west direction.

D. *The Rift Zone*

1. *The Direction of these Features*

As noted earlier, the Rift Zone discussed here is that zone of troughs and channels separating the Northern Unit, as defined above, from the Southern Unit. The Rift Zone is clearly defined by the 500 metre isobath.

The Rift Zone stretches roughly from 10° 30′ E to 16°E and follows the northwest/southeast "grain" of this part of the Central Mediterranean. It is separated from Caltanisseta-Gela Basin in the north by the Adventure Bank — Madrepore Bank — Ragusa-Malta Plateau alignment. On the south the limits of the Rift Zone are along the northern edge of the Lampedusa Plateau and the Medina Bank.

Within this part of the Central Mediterranean the morphological direction of particular significance, seen in the alignment both of coasts and of sea-bed features, is the direction northwest/southeast to west-northwest/ (11) east-southeast. Examples selected from the IBCM are listed below:

Coasts

—The southwest-facing coast of Sicily

Islands

—The long axis (extension) of Pantelleria Island
—The long axis of the Maltese Islands.

Sea Bottom Features

—Gela Basin, paralleling the coast of Sicily
—Pantelleria, Malta and Linosa Troughs
—Melita Banks[1]

This direction indicates the main direction of structural features: faults, *grabens*, and *horsts*, which are the primary cause of most morphological features. These structural features are due to a general pull-apart of the two main Units of the sea-bed area of the Pelagian Sea, *i.e.*, the Southern Unit and the Northern Unit separated by the Rift Zone. The tectonic forces causing the rifting (pull-apart) are moving in a direction more or less perpendicular to the extension of the rifting zone, *i.e.*, northeast/southwest to north-northeast/south-southwest.

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[1] It is interesting to note that the Medina Bank (as defined by the 200-metre isobath) trends in quite a different direction: northeast/southwest.

These Northern and Southern Units are not separated by a single fault or shear plane, but by a series of many such faults or planes. These fault planes, only narrowly separated, stretch along a zone or belt extending from the narrows between Tunisia and Sicily to the divide between the Sicily-Malta Escarpment and the Medina Escarpment. In a north/south direction, they extend between the Adventure Bank, the Gela Basin and the Ragusa-Malta Plateau on the north to the structural highs on the south stretching from the El Haouaria Bank (north of Cape Bon), the ⑪ "Tunisian Plateau" (the term used on the IBCM), the Melita and the Medina Banks to, and finally merging into, the south flank of the Heron Valley at the southern end of the Sicily-Malta Escarpment.

Of course, there are also faults within the Northern Unit and the Southern Unit. But their occurrence is more singular, or, in any case, less frequent and not closely grouped as within the Rift Zone. Being less important in a geological-structural sense, these faults are revealed geomorphologically as far less prominent sea-bed features than the Rift Zone features.

2. *The Troughs*

Within the Rift Zone the structural and morphological importance of the faults is underlined by the following facts:

—the maximum depth of the troughs (structural *grabens*):

—the Pantelleria Trough	1,314 metres
—the Malta Trough	1,715 metres
—the Linosa Trough	1,615 metres.

(Note: the depth of the *grabens* is much deeper. Each of these *grabens* is filled by thick Quaternary sediments forming rather small Abyssal Plains.)

—The shallowness of the high sea-bed areas (mainly *horsts*) near the flanks of the troughs:

—The Pantelleria Trough is surrounded by shoals measuring, ⑪ as taken from the IBCM: Pantelleria Bank less than 200 metres, even rising as high as 12 metres (to the north); "230 metres" (at the southeast end); "182 metres" (at the southwest flank); and the volcanic island of Pantelleria (at its northwest end).

—Malta Trough: "252 metres" (to the north); "226 metres" (to the northeast); the Maltese Islands (northeast and east of its easterly end); "258 metres" (opposite Malta); "534 metres"; "380 metres"; and "368 metres" (at the southwest flank of this trough).

—Linosa Trough: At the northeast flank, the sea bed rises above 600 metres and at its southwest flank to less than 400 metres, aside from the Island of Linosa itself.

—The steep inclination of the lateral slopes: frequently 1:10 to steeper than 1:5.

—The frequency of volcanoes within the Rift Zone (e.g. Pantelleria, Linosa, and point "113 metres" between the Malta Channel and the Medina Channel.)

3. *The Malta and Medina Channels*

The geomorphological features that represent the continuation of the Rift Zone eastward from the Troughs and which separate the southern and southeastern areas of the Ragusa-Malta Plateau from the area of the Melita and Medina Banks are the Malta and Medina Channels. These Channels, which drop below the 500 metre isobath, form part of the boundary between the Southern Unit and the Northern Unit and join up with the Ionian Sea to the east, forming the eastern sill[1] of the Strait of Sicily.

The Channels are separated by an east/west elongated shoal ("113 ⑪ metres" on the IBCM) formed by a submarine high, understood to be a volcano, not active at present.

To the south of the Medina Channel lies the extended area on which the Medina Bank is located. The fact that these Channels form a natural separation between the Ragusa-Malta Plateau and the Medina Bank is underscored by the fact that the flanks of both Channels are the steepest features of this region, as is revealed on the Slope Map.

E. *The Eastern Geomorphological Boundary of the Ragusa-Malta Plateau and the Pelagian Block*

As mentioned earlier in this Report, the natural eastern limit of the Ragusa-Malta Plateau and of the Pelagian Block is a Fault Zone, extending in almost a north/south direction, from the eastern coast of Sicily towards the bend in the North African coastline east of Misratah. In the north, it consists of the Sicily-Malta Escarpment. The drop of this Escarpment into the Ionian Sea is one of the steepest features known in the entire Mediterranean, plunging in places to a depth of 3,000 to 3,600 metres in the narrow space of 15 to 18 kilometres.

In the area where this Fault Zone is crossed by the Rift Zone, the feature becomes somewhat obscured by the east/west trending features of

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[1] A submarine ridge or rise separating partially closed basins from one another or from the adjacent ocean.

the steep and deep Heron Valley and the dissected ridge of several subma-
⑪ rine mountains, called on the IBCM the "Medina (Malta) Ridge." (This
Ridge is understood by many geologists as being a feature mainly of
volcanic origin.) This underlines the structural importance of the Rift
Zone and its link to the Medina (Malta) Ridge.

⑪ To the south, again consulting the IBCM, is the Medina Escarpment, trending almost north-northeast/ south-southwest. It separates the shallower areas surrounding the Medina Bank from the Sirt Rise area to the east and forms a natural morphological boundary between them. To the east of this Escarpment, we find a sea floor that is morphologically very irregular, dissected by valleys and valley-like features and with some high elevations such as the Epicharmos Sea Mountain and the Archemedes Sea Mountain, not to mention less spectacular "sea hills".

The southern part of the Fault Zone ceases to be an escarpment in the proper sense of the term. The southern continuation of this Fault Zone is indicated by a general but never abrupt break in the general easterly sloping of the depression running along the southern part of the Pelagian Block. To the east of the Fault Zone, the sea-bed slopes downward more steeply than it sloped upward to the west of this Fault Zone.

TABLE A

N° of point of measurement	Water depth (at intersecting isobath)	Distance to Libyan coast	Distance to previous point	INCLINATION OF SLOPE (waterdepth:distance) mean value from Libyan coast		mean value from previous point		REMARKS
1)	100m	9,7nm		1:179	(=0°19'31,65")			
2)	200m	18,0nm	8,3nm	1:166	(=0°20'42,54")	1: 83	(=0°41'25,0")	slightly undulating between (1) and (2)
3)	400m	26,8nm	8,8nm	1:124	(=0°27'43,39")	1: 82	(=0°41'55,3")	
4)	600m	37,0nm	10,2nm	1:114	(=0°30'09,29")	1: 95	(=0°36'11,13")	start of bottom of trough
5)	600m	42,3nm	5,3nm	slight depression between (4) and (5)				
6)	600m	47,4nm	5,1nm	slight elevation between (5) and (6)				
7)	600m	51,0nm	4,6nm	thalweg of the Tripolitanian "Valley" between (6) and (7)				
8)	600m	73,2nm	22,2nm	smooth to gently undulating area				
9)	635m	74,7nm	1,2nm	slope from (9) to:		1: 66	(=0°52'04,99")	small depression
10)	400m	87,0nm	12,3nm	1: 97	(=0°35'26,37")			
11)	200m	109,5nm	22,5nm	1:148	(=0°23'13,66")	1:208	(=0°16'31,65")	Melita Bank

[1]) Point of measurement at the intersection of the meridian 14°30'N with respective isobath

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"JOURNEY" FROM THE LIBYAN COAST TO THE MELITA BANK (14°30'E meridian)

TABLE B

N° of point of measurement on the 15°E meridian	water depth (e.g.at intersecting isobe:	Distance to Libyan coast	Distance to previous point	INCLINATION OF SLOPE (water depth : distance) mean value from Libyan cost		INCLINATION OF SLOPE (water depth : distance) mean value from previous point		REMARKS
21)	200m	7,5nm	-	1:69	(=0°40'49,14")			
22)	400m	15,1nm	7,5nm	1:70	(=0°49'06,44")	1:71	(=0°48'24,95")	
23)	800m	30,0nm	14,9nm	1:93	(=0°36'57,82")	1:138	(=0°24'54,65")	
24)	about 760m	36,0nm	6,0nm	1:88	(=0°39'03,82")	1:69	(=0°49'49,14")	thalweg
25)	about 700m	47,2nm	11,2nm			probably a slight elevation		
26)	about 770m	61,0nm	13,8nm					depression
27)	about 700m	68,8nm	7,8nm			1:205	(=0°16'46,16")	thalweg of the 'Misurata"Valley"'
28)	about 590m	76,5nm	7,7nm			1:129	(=0°26'38,92")	
29)	about 625m	80,1nm	3,6nm			1:189	(=0°18'11,34")	thalweg of Melita "Valley"
30)	600m	81,0nm	0,9nm			1:68	(=0°50'33,09")	
31)	400m	94,0nm	13,0nm			1:121	(=0°28'24,63")	
32)	400m	100,5nm	6,5nm			depression between (31) and (32)		
33)	200m	126,5nm	26,0nm			1:241	(=0°14'15,87")	SW-end of Medina :

"JOURNEY" FROM THE LIBYAN COAST TO THE SW-END OF THE MEDINA BANK (15°E meridian)

TABLE C

LOCATION	ZARZIS		INTERSECTING POINT 13°23'E/33°30'N		THALWEG 'TRIPOLITANIAN" VALLEY	SLIGHT-ELEVATION	INTERSECTION with 400m ISOBATH		600m ISOBATH		800m ISOBATH
WATER DEPTH	0m		ca.325m		ca.500m	ca.400m	400m		600m		800m
DISTANCE ween two points		116 nm	/	17 nm	/		/	40 nm	/	17 nm	/
		215 km	/	31.5 km	/		/	74 km	/	31.5 km	/
SLOPE		1:659	/	1:180	/		/	1:370	/	1:157	/
		0°05'13"	/	0°19'05.9"	/		/	0°09'17.42"	/	0°21'53.27"	/
Distance Intersecting Pt.			/-28nm (=52 km)......		......	-/					
			/-34nm (=63 km)......		......	......	/				
			/-73nm (=135km)......		......	......	......	......	/		
			/-90nm (=167km)......		......	......	......	......	......	......	/
	/-......	......	206nm (=382km) mean slope 1:477 (=0°07'12.42")......		......	......	......	......	......	......	/

"JOURNEY" ON THE 33°30' PARALLEL

PART II

THE GEOLOGY AND GEOPHYSICS OF THE AFRICAN CONTINENTAL MARGIN SOUTH OF SICILY

1. Introduction

1.01 This paper summarises in relatively non-technical language studies of the geology and geophysics of the African continental margin south of Sicily focussed on those aspects of the subject believed to be most relevant to the matter of continental shelf delimitation between Libya and Malta. The studies were undertaken by the scientists listed below, who have approved the contents of this summary:

D. Jongsma—Free University Amsterdam, The Netherlands

J. E. van Hinte—Free University Amsterdam, The Netherlands

J. M. Woodside—Lyngby Geophysical Services, Dartmouth, Nova Scotia, Canada

1.02 The sources of data used for these studies have been several: ***first***, the rather considerable prior studies of the area by experts in the field and the resulting technical papers, some of which will be cited below in the text and others of which are listed at the bottom of the page[1]; *second*, offshore well data provided by Libya or made available from other sources; and *third*, data obtained from seismic reconnaissance lines provided by OGS[2] in Trieste.

2. General Background and Geological History

2.01 To understand the present geological setting of the Central Mediterranean Sea it is important to consider it in the plate tectonic framework of the entire Mediterranean region. This approach, which is now used by most geologists, has been applied to the Mediterranean region for the past fifteen years; it serves as a good starting point and basis for comparison of observed geologic phenomena. However, in this summary only the most general outline of plate tectonics will be given.

2.02 The general plate tectonic picture is one of young, hot oceanic lithosphere in the Balearic Basin and old, colder oceanic lithosphere in the Ionian Sea being subducted[3] (or just starting to, in the case of the Balearic

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[1] A partial listing of some of the sources relied upon, supplementing those specifically referred to in the text, are: McKenzie (1972); Laughton and Whitmarsh (1974); Dewey *et al.* (1973); Cohen (1980); Yielding *et al.* (1981); Bousquet (1977); Auzende *et al.* (1972); Winnock (1979); Illies (1981); Biju-Duval, B. *et al.* (1974, 1977, 1978); Burollet *et al.* (1974, 1979, 1981); Finetti and Morelli (1973); Morelli *et al.* (1975); Gantar *et al.* (1961); Finetti (1981, 1982).

[2] Osservatorio Geofisico Sperimentale, Trieste.

[3] Subduction involves one lithosphere plate descending beneath another.

Basin) to the south and north respectively. Between these two basins the continental lithospheres of Africa and Eurasia are in contact. Contact extends from the west of Sardinia (Auzende *et al.* (1974); Auzende (1971)) to the Sicily-Malta Escarpment, or the west tip of Calabria. A promontory of the African continent situated in the central part of the Mediterranean has collided with the northern part of Sicily.

2.03 The known crustal structure of this African continental margin shows it to be similar in thickness to passive continental margins along the Atlantic. The geology indicates that this margin has been sinking gradually since the Early Jurassic (approximately 180 million years ago).

2.04 Analysis of wells indicates similar rocks and similar Mesozoic-Early Tertiary (approximately 100 million years ago) subsidence history off Libya, the Malta Platform and southern Sicily. During this period, a sedimentary rift basin, the Tripolitanian Basin, formed near the Libyan coast. Seismic reflection profiles tied to wells drilled also show that the shelf off Libya was continuous with the Ragusa-Malta Plateau until the Late Miocene (approximately 10 million years ago).

2.05 Then the situation on this continental margin between Sicily and the African coast changed radically. Starting about 10 million years ago, the northern part of the continental margin, including the Ragusa-Malta Plateau, dislocated from the African continental margin. This dislocation continues to this day along a complex fault zone defining the limit of volcanic activity observed on Sicily (referred to in the text of the Memorial as the "Rift Zone"). The expression of this fault zone, which from several lines of evidence appears also to involve wrench or strikeslip faulting, is most apparent in the seafloor topography immediately southwest of Malta. Around the Late Neogene (approximately five million years ago), as part of this tectonic activity along the fault zone, the Ragusa-Malta Plateau and Malta were uplifted.

2.06 Plate interaction between two continental lithospheres in contact is accommodated in various ways depending on the geology and the relative movement of other plates. For example, underthrusting of continental material approaching a subduction zone may continue, as is the case of the Himalayas and southeastern Turkey. In essence, the one plate slides underneath the other. On the other hand, the response to continental collision may be a complex system of faulting. What exactly is happening in the case of the plate interaction in the Central Mediterranean is particularly complex in part due to the fact that the tectonic movements here are still going on.

2.07 A close look at the data bearing on this problem, along with considered opinion based on published interpretation of the geology, has led us and others (*e.g.*, Bousquet (1977)) to the conclusion that the wid zone of tectonic deformation which forms the plate boundary may well now lie largely in the region of active tectonics in the Pelagian Sea between Sicily and the Lampedusa-Melita-Medina Plateau, that is in the area of the fault zone referred to above which started to develop some 10 to 5 million years ago.

2.08 In the earliest plate tectonic framework published for the region in which the geology and evolution of the Mediterranean is taken into account (Dewey *et al.* (1973)), southern Sicily and the Ragusa-Malta Plateau are shown as belonging to a small separate plate, the Messina Plate[1]. The southern boundary of this small plate is defined by the Strait of Sicily and the Malta and Medina Channels.

2.09 To look more closely at this fault zone (called in the Memorial the "Rift Zone[2]"), deep *grabens* (up to 1,715 metres in the Malta Trough) constitute the western part of this Zone while the eastern part is narrower with an average of 500 metres (maximum of 645 metres). It is in this eastern part where the tectonic movements have been more those of shearing rather than the pull-apart movement reflected by the Malta Trough. The Fault Zone continues eastward into the Ionian Basin where it forms a strong positive topographical feature, the Medina (Malta) Ridge. Its crossing of the margin between the Pelagian Block and the Ionian Basin marks the division between the north-northwest trending steep Sicily-Malta Escarpment on the north and the more gently sloping north-northeast trending Medina Escarpment on the south.

2.10 This Fault Zone forming the boundary between the southern part of the Ragusa-Malta Plateau region and the Medina-Melita Bank—Lampedusa Plateau area is also clearly delineated in geophysical data covering the region. Gravity profiles corrected for topography and different densities of the crust show a peak over the zone of *graben* formation and active faulting[3]. This gravity high is explained as a result of a thinner crust under the zone. Magnetic measurements show anomalies along the boundary which continue into the Ionian Basin.

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[1] "Figure 1" on p. 3139 of this study of Dewey shows a micro-plate boundary along the Strait of Sicily with Malta. The Ragusa-Malta Plateau is seen to be situated on the "Messina Plate" and the continental margin to the south situated on the "African Plate". The earlier work of McKenzie (1970) on plate tectonics was based on seismic distribution; Dewey's later work included geological evolution.

[2] The term "Rift Zone", though a short-hand, practical term, incompletely describes the nature of this fault zone which involves movements, in addition to the pull-apart motion suggested by the work "rift", such as shearing, fracturing, wrench and strike/slip. Therefore, in this paper the term "Fault Zone" will be used.

[3] The technical term used by geologists to describe such a feature is a "Bouguer anomaly". An "anomaly" is a subsurface geological feature which is different from the general surroundings. A "Bouguer anomaly" is a gravity anomaly after corrections for latitude, elevation and terrain, in this case being corrected for topography out to a radius of 166.7 kilometres using an assumed crustal density of 2.67 gm-cm^{-3}.

2.11 Figure No. 1, attached following page II-9 of this paper, depicts these gravity profiles where peaks are seen to occur over the zone of active faulting. The data on which the sketch (which is on a horizontal scale of 1:4,000,000) has been based is derived from Finetti and Morelli (1973), Plates II, VIII and XI for the Central Mediterranean. Further technical details regarding this data are too complex for this summary; however, certain brief observations appear useful in explaining the geophysical data portrayed on this Figure.

2.12 The Figure shows the variability of gravity and bathymetry along six profiles crossing the Pelagian Sea (Lines AA′ to FF′ appearing in the index figure at the top of the Figure). For reference, the 1,000 metre isobath has been dotted in and the 200 metre isobath around the Melita and Medina Banks shown by dashed lines.

2.13 Profiles AA′ and BB′ clearly show the regional positive Bouguer anomaly over the Fault Zone and the local maxima over the Linosa Trough and western part of the Malta Trough. In contrast, profile EE′ shows that the eastern section of the Malta Trough has a relative minimum Bouguer anomaly. The difference is attributed to the degree of crustal thinning and associated volcanism in the different troughs: volcanism is present in all but the eastern part of the Malta Trough suggesting that this part of the Malta Trough has not rifted as much as the other parts, a fact rather normal along fault zones where the degree of rifting varies along the length of the zone.

2.14 Profile FF′ between Libya and Sicily which runs north/south and cuts across the eastern part of the Fault Zone shows that the only anomalous region is between the Medina Bank and the Ragusa-Malta Plateau. A large topographic feature between the Medina and Malta Channels has positive Bouguer and magnetic anomalies associated with it. This has led to the conclusion that this feature is volcanic lying on the trace of one of the faults interpreted from the seismic reflection data as striking east/west through the channel. At least one seismic profile shows an intrusion of material into nearby sediments along with uplift of overlying sediments. This volcano lies along a line joining the Medina (Malta) Ridge (at least parts of which are considered to be volcanic) with the volcanism occurring around Linosa.

2.15 Seismic refraction work (a definition of this process appears at paragraph 3.04 below) supports the presence of a thinner (20 kilometres instead of 35 kilometres) crust under the western side of the zone of rifting. Seismic reflection profiles across the zone show intense, presently active, faulting and tilting of strata together with the presence of volcanic features, confirming a deep sea-bed fracture[1]. Typical examples of structures seen in seismic reflection profiles associated with wrenching are shown in Figures Nos. 2 and 3 following page II-9 of this paper. An index figure showing the various seismic profile lines of relevance to this discussion is set forth following page II-9 as Figure No. 8.

2.16 In summary, a west-northwest/east-southeast geological boundary which became active recently (starting between 10 and 5 million years ago and continuing to the present time) runs between the Ragusa-Malta Plateau and the Medina Bank breaking the African continental margin. Its expression is observed in the present day seafloor topography and is revealed in the geology as an active fault zone. Geophysical measurements, such as gravity, magnetic and seismic reflection measurements and seismicity also delineate this boundary.

3. Faulting and its Bathymetric Correlation

3.01 The bathymetry used in this study is taken from Sheet 8 of the ⑪ IBCM[2]. Active tectonics are reflected in the bathymetry. Thus, the maximum relief in the Pelagian Sea (*i.e.*, about 1,715 metres of variation across the Malta Trough) occurs where fault-controlled basins are developing to the west and south of Malta, and north of the Lampedusa-Melita-Medina Plateau. In the analysis of recent faulting which follows, faults observed in the seismic reflection profiles have been extrapolated only where there is an adequate correlation between such faults and scarps expressed in the bathymetry.

3.02 The features shown in the bathymetry reflect part of the geologic history of the Pelagian Sea. The north-to-south alternation of northwest/southeast oriented relative highs and lows has persisted to some degree since the Mesozoic (between 200 and 100 million years ago). The relatively shallow area from the Lampedusa Plateau (called the "Tunisian ⑪ Plateau" in the IBCM) across the Melita and Medina banks has been present there since the lower Cretaceous (over 100 million years ago). A slight depression to the south of this high is all that remains of the fault system which originated in the Middle Mesozoic (approximately 200 million years ago) (Ziegler (1978)). The bathymetry is smooth, indicating that any tectonic processes are no longer active enough to produce a broken sea-floor topography.

3.03 The marked surface relief representing the bottom of the Pliocene (about five million years ago) shown in the northern sector above the Lampedusa Plateau-Melita and Medina Bank area, indicating active tectonics there since the Miocene (approximately 10 million years ago), is therefore the significant feature to examine further here. The correlation between the bathymetry and the faults on the base of the Pliocene along the northern sector is evidence that the tectonics which produced them both were the same and are active today. This can be seen from an examination of Figure No. 4 following page II-9 of this paper, a brief, simplified explanation of which follows.

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[1] The matter of volcanism will be dealt with below in greater detail.

[2] See Part I of this *Technical Annex* for the identification and description of this bathymetric chart.

3.04 Figure No. 4 is divided into a northern profile and a southern profile, the dividing line being the 35°N parallel of latitude. The bathymetric data used is taken from the IBCM (see footnote 2 on page II-5 above). ⑪ These profiles compare post-Miocene (since approximately 5 million years ago) tectonics north and south of the 35°N parallel. The depth to the base of the Pliocene (about five million years ago) is taken from seismic reflection profiles and plotted in seconds of two-way seismic travel time (*i.e.*, the time for seismic energy to travel down to that depth and be reflected back to the seismic ship making the profile). The northern profile coincides geographically with seismic line MS-19 between Sicily and the Tunisian Plateau[1]. The southern line follows longitude 15°E between Libya and the Medina Bank (also shown on the index map for purposes of comparison). Horizontal scale is 1:1,000,000 and vertical scales are the same for north and south profiles to facilitate comparison.

3.05 What stands out so prominently in comparing the northern and southern profiles is that, in the northern area above the 35°N parallel, the relief of the base of the Pliocene corresponds closely with the bathymetry of the present-day sea-bed. The presently active faulting is directly affecting the contours of the sea-bed. However, below the 35°N parallel, the correlation disappears: the sea-bed is smooth, showing that tectonic processes are not affecting the sea-bed.

3.06 Thus, apart from the Sicily-Malta and the Medina Escarpments (which are major but older faults), active faulting in the Pelagian Sea area is now occurring north of the 35°N parallel of latitude along the Fault Zone running from the Pantelleria-Linosa-Malta Troughs across south of Malta to the Medina (Malta) Ridge. To better illustrate this variation within the region, a fault displacement analysis has been made by the authors. For this purpose, the Pelagian Sea was divided along latitude 35°N. Only faulting west of 16°E was considered because the Medina Escarpment to the east is common to both areas and represents the boundary with a different geologic province to the east: the Ionian Sea. The results of this study, described below, are portrayed graphically on Figures Nos. 5 and 6 following page II-9.

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[1] See location map on Figure No. 7.

3.07 A total of 4,419 kilometres of seismic reflection lines were considered, of which 953 kilometres were in the northern area and 3,466 kilometres in the south. Despite the sampling bias to the south (*i.e.*, more than three times as many lines), the sum of all vertical fault displacement (or "throw") to the north was 6,625 msec of two way travel time (*i.e.*, 4,969 metres if a conversion factor of 0.75 is used, corresponding to a velocity for sound in water of 1,500 metres/sec) compared to 2,670 msec (or 2,002 metres) to the south. No faults with throws greater than 200 msec (150 metres) were observed to the south, but to the north seven faults were observed with throws of 300 msec or more (225 metres or more) giving a combined total of 2,900 msec (2,175 metres) of displacement. If the northern data are normalised with the southern data, the disparity is even greater: not only are almost all the large faults to the north, but there are also more than twice as many minor faults (with displacements of less than 200 msec (150 metres).

3.08 The foregoing difference between north and south faulting is further emphasised by the fact that the southern faults are generally growth faults — that is, faults associated with deposition rather than with active, current tectonic activity — and are virtually quiescent today.

3.09 Some of the northern fault trends inferred from the seismic reflection data are similar to trends mapped on the Islands of Gozo and Malta (*e.g.*, Vossmerbaumer (1972); Pedley *et al.* (1978); Illies (1981)). The predominant trend to normal faulting on Malta is east-northeast to northeast. Ground displacement of these faults is not great; the Victoria Lines Fault only has about 100 to 200 metres of throw (Pedley *et al.* (1978)). Yet these trends produce a similar scale of faulting at sea, with the same sense of motion and strike for example in the Malta Trough south of Malta. However, it is the northwest/southeast oriented faults which have developed the largest displacement and indeed define the Malta *horst* block itself. Profiles at right angles to each other across the Malta block graphically illustrate the difference in scale of faulting (*e.g.*, Vossmerbaumer (1971)).

4. The Presence and Significance of Volcanism[1]

4.01 The second phase of faulting which produced the deepening troughs north of 35°N latitude coincided with a period of volcanism which continues today. The volcanism is associated with the faults, causing elongation of volcanic islands like Linosa and Pantelleria over the northwest/southeast striking faults along which the lava was extruded (Di Paola (1975)). Secondary tectonic lines act as feeding fissures for the volcanism.

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[1] The process by which the magma (molten rock) and its associated gasses rise into the crust and are extruded onto the Earth's surface and into the atmosphere.

4.02 Young (*i.e.*, occurring during the time of recorded history) volcanism has been located at 15 sites, generally in the north and northeast part of the Fault Zone (Zarudski (1972)). The northeasterly volcanism is associated with faulting, but not with large troughs, suggesting that there is a northeasterly shift of the distensive tectonics. Volcanics have not yet been observed in the eastern part of the Malta *graben*, although a large volcanic feature lies in the channel between Medina Bank and the Malta Plateau, linking the volcanics in the Fault Zone with those forming the Medina (Malta) Ridge to the east.

4.03 The composition of the young volcanic materials is the same as those produced by Mt. Etna and Mt. Iblei in Sicily (Barbieri *et al.* (1974)). To date, there has been no young volcanism observed to the south of the Fault Zone.

4.04 Magnetic anomalies are associated with the volcanics. Buried volcanic material has been inferred from magnetic anomalies elsewhere in the Pelagian Sea, and drilling has confirmed its presence in several cases (*e.g.*, Ziegler (1978); Finetti (1982)). The buried volcanism evidently is related to much earlier tectonic events such as the faulting which produced the rifts south of the Medina and Melita Banks. As noted above, all recent volcanism lies north of the 35°N parallel extending from the Malta and Medina Channels to the Medina (Malta) Ridge.

4.05 The significance of volcanism is essentially two-fold within the context of the subject of this paper. *First*, the presence of volcanism means that the Fault Zone where volcanism is found is characterised by deep fractures or faults, cutting so far into the Earth's crust as to allow *magma* to rise to the Earth's surface. Thus, such a fault is necessarily of major geological importance. *Second*, where, as in the case of the Fault Zone here north of the 35°N parallel, the volcanism appears at or near the surface of the sea-bed, it means that the volcanism, and hence the faulting or shearing, is active and deforming the seafloor.

5. Fault Map

5.01 As a means of summing up the foregoing in graphic form, Figure No. 7 has been prepared, a reduced version of which appears following page II-8. (The full-scale Figure may be found in the pocket section of Volume III.) This Figure is based on data showing the faults picked from all the seismic reflection profiles where the seafloor shows recent vertical displacement. The simple graph on the right-hand side of this Figure explains the way in which the correlation between faulting and recent seabed displacement was calculated and reflected in the Figure. Where the bathymetry indicates a continuation of the sea-floor displacement, the fault has been extrapolated beyond the survey lines.

5.02 There are three colours used in plotting the faults to show the vertical displacement as explained in the Figure's legend. The faults were separated on a roughly numerical basis into the following three classes: (1) 35-75 msec of throw; (2) 75-150 msec; (3) and greater than 150 msec of throw.

5.03 Strike/slip faults have been added when known and are shown by blue lines on the Figure. (In cases of uncertainty, the fault is shown as a dotted blue line.) A sinistral strike/slip offsets the Pantelleria and Malta Troughs (Winnock (1979)). Two dextral wrench faults strike north-east/ southwest between Gozo and Malta (Illies (1981)) and another one can be seen on a seismic reflection profile between the Medina Bank and Malta. It should be noted, in this connection, that since Figure No. 7 only shows vertical expression, strike/slip faults show up as minor features, which they are not. The lines showing strike/slip faulting on Figure No. 7 in the Malta-Medina Channel area reflect faulting of an importance as great as in the area of the Troughs: the vertical displacement is merely far less due to the nature of this type of faulting.

5.04 Known volcanoes are indicated in blue and inferred volcanoes in brown. Inference of volcanism is based on a distinct magnetic anomaly correlated directly with a bathymetric high. Older volcanoes which have been buried, will retain a magnetic anomaly but are not indicated on this map because there is no clear topographic feature with which they may be correlated.

PART III

THE AREA OF THE CENTRAL MEDITERRANEAN: A BRIEF RESUME OF ITS GEOLOGICAL SETTING AND GEODYNAMIC EVOLUTION

Professor I.R. Finetti

I. Introduction—Source of Data

This paper concentrates on certain aspects of the geology of the areas of the Pelagian and Ionian Seas believed to be of particular relevance to the Court in resolving the present dispute. The author has recently published a scientific paper[1] dealing with the geology of the entire Central Mediterranean including the Pelagian and Ionian Seas based on geophysical and geological exploration data and research over a number of years. Therefore, references will be made from time to time to this paper, where pertinent, and to earlier papers of the author, not to speak of a number of relevant technical papers by other geoscientists in the field.

Several introductory points should be made at the outset. The first relates to the sources of data on which the conclusions of this paper — and the recent study referred to — are based. The second relates to the manner in which this paper has been organised.

Turning first to the sources of data, after more than two decades of intense geological and geophysical exploration, remarkable progress has been made in the knowledge of the structure and stratigraphy of the Mediterranean. This does not mean that all aspects of these subjects have been cleared up; but it is today possible to propose schemes of geodynamical evolution much more controlled than it was some years ago. Evidence of the progress made in knowledge of the geology of the Mediterranean is seen in the large number of published papers in the field. Appended to the end of the author's December, 1982 technical paper referred to above is a partial list of more than 300 technical papers upon which the author has drawn in his studies of the Mediterranean.

In addition to scientific investigation, a consistent contribution has been made to scientific knowledge by oil exploration activities on the continental shelf areas in question. Significant contributions to the enhancement of knowledge were also furnished by the drilling exploration activities of the Glomar Challenger Joides Project (Legs XIII and 42a); Ryan *et al.* (1973); Hsü *et al.* (1978).

Reconstructions of the regional structural and stratigraphic conditions are mainly based on seismic explorations and on the substantial amount of

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[1] Finetti, I, 1982 - "Structure, Stratigraphy and Evolution of Central Mediterranean", *Bolletino di Geofisica Teorica ed Applicata,* Vol. XXXIV.

\V

available data of oil exploration along the continental margins supplied to the author by the Libyan authorities. The most complete regional seismic exploration which covers the whole Mediterranean has been that carried out by the Osservatore Geofisico Sperimentale of Trieste (OGS), and published by Finetti and Morelli (1972, 1973) and Finetti (1976, 1981, 1982).

Important seismic data on deep water areas of the Mediterranean have also resulted from the exploration activity of the Institut Français de Pétrole (IFP), the Conseil National pour l'Exploration des Océans (CNEXO) and others: Mauffret *et al.* (1973); Mülder (1973); Biju-Duval *et al.* (1974).

The above data, together with the detailed geological and geophysical data and information supplied by Libyan authorities, constitute the basic data for understanding the existing geological conditions of the Mediterranean in general and of the Pelagian Sea in particular.

This short paper has been organised in the following manner: *first*, the relevant geological setting and geodynamic evolution of the area will be summarised; *second*, some rather brief remarks will be made about other points of specific relevance, such as the key structural features of the region and the rifting and volcanism, which play an important role in connection with these features; and *third*, an explanation will be given of the figures enclosed with this paper.

In view of the fact (referred to earlier) that the author has recently published a paper dealing with some of the points also dealt with here, and the fact that there exists an extensive body of already published works, this paper will be very summary in form.

2. Geological Setting and Geodynamic Evolution

From Cretaceous until Middle Miocene or from over 100 million years ago to about 10 million years ago, what is the present Maltese Islands area remained continuously covered by marine waters and, together with the remaining Pelagian Sea[1], was involved in a continuous depositional process. Only Lampedusa and Lampione Islands emerged at different times during the Lower Tertiary Times (approximately 50 million years ago).

The particular area between Sicily and Libya presently corresponding to the area of major *grabens* (Malta, Linosa, Pantelleria and Medina) — the Sicily Channel — consisted of a substantially flat, unfractured and undeformed Paleocene-Eocene-Oligocene-Miocene cover. Then an extensive young rifting process started to occur during the Neogene-Quaternary stretching phase (about 15 million years ago), a process which continues today. It produced a remarkable deformation of the above-mentioned area along the rift zone.

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[1] By this name, the author refers to the area of sea between Sicily, Tunisia (Cape Bon), the Tripolitania coast and, on the east, the Sicily-Malta Escarpment and the eastern edge of the Medina Bank. In literature this part of the Mediterranean is also called the "Strait or Channel of Sicily". However, the author will use the term "Sicily Channel" to refer only to the central area of the Pelagian Sea where the prominent rifting process exists and the larger *grabens* such as those of Malta, Pantelleria, Linosa and Medina occur. See Finetti (1982).

Intense faulting, collapse and uplifting of blocks, tilting and igneous extrusion (and intrusion) *i.e.*, volcanic activity, were the main geological results of this rifting process. The general dominating trend of rifting was northwest/southeast. With a few exceptions, all main geomorphological structures of the Sicily Channel were generated during this extensional process.

The Islands of Malta, in particular, appeared at this time as a small area of the uplifted block at the north flank of the Malta Graben. This *graben* is the most important of the *grabens* in the Sicily Channel from the standpoint of its dimensions and the intensity of rifting. The evidence is that the uplifting of the Malta block was accompanied by a tilting movement that determined the emersion of the Maltese Islands. The Malta block is faulted also on its northeast side, additional evidence that structurally it is a *horst*.

The area from Sicily to the Maltese Islands was practically unaffected by the recent and continuing rifting phase of the Neogene-Quaternary described above. To the south of the rifted *graben* area of the Sicily Channel, the substantially tabular zone of the Lampedusa Plateau area and of the Melita-Medina Banks was only slightly affected by the Neogene-Quaternary stretching phase. This is demonstrated by Figure No. 7 (appended to this paper) consisting of four separate figures showing Seismic Line MS-19 extending from the Ragusa Plateau in the north across the Malta *horst*, the rift zone of the Sicily Channel, down to the Lampedusa Plateau in the south[1].

Between Malta and the Medina Bank there exists, with no interruption whatsoever, what is the continuation to the east of the Pantelleria - Malta - Linosa Rift Zone (the Sicily Channel). I refer here to the major rift area, the Medina Graben, which geomorphologically is expressed by the two channels running between Malta and the Medina Bank (sometimes referred to as the Malta and the Medina Channels). (Whether there is one wide *graben* here or the rifting underlying the Channels should be divided into two *grabens* is a matter of unimportant detail for present purposes).

The rifting process of the Sicily Channel is more developed in the area from Pantelleria-Linosa to Malta than at the northwest extremity of the

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[1] A discussion of this and the other Figures included with this summary appears at section 4 below.

Pelagian Sea between Cape Bon in Tunisia and Mazara del Vallo in southwest Sicily. Also, along the Medina Graben the process is not so impressive as that shown on the seismic line MS-19 (see Figure No. 7)[1]. But the Sicily Channel rifting area is continuous all along the entire Pelagian Sea from the Tunisian extremity to the Ionian Sea.

Seismic, gravity and magnetic data show clearly that the rifting, still active, has already produced a marked geological deformation involving not only the entire sedimentary sequence, but marked tilting movements on both sides of the Sicily Channel area. It is evident that the Lower Crust is participating in the geodynamic processes with uplifting of the earth's mantle. Bouguer gravity data confirms this observation (as is discussed in the author's 1982 paper[2]). In fact along the Sicily Channel a regional positive anomaly exists which, in the author's view, is associated with the Crustal thinning produced by the Neogene-Quaternary stretching phase.

It is evident that the rifting process in the Sicily Channel has already evolved to a stage as now practically to divide the Pelagian Sea into two separated blocks. One to the north is formed by the Adventure and Ragusa-Malta Plateaus; the other on the south is formed by the Lampedusa and Medina Plateaus. This second block remains substantially connected to the North African megaplate because even if it is affected by several extensional faults, these are not large, associated and coherent like those of the Sicily Channel rift system and do not constitute a continuous rift system of regional importance. The fact that the Maltese Islands emerged during the time of, and in connection with, the rifting process that separated the Ragusa-Malta Plateau from the Medina Bank shows how intrinsically connected these events are.

So, the Malta Island group structurally belongs to the Ragusa-Malta Plateau area and is completely separated from the Medina Bank. The fracture system of the Medina Graben is accompanied by tilting which indicates that the faults separating the Malta block from the Medina Bank are not superficial accidents but prominent tectonic processes involving the entire Upper Crust and part of the Lower Crust. The collapsed block of the Medina Graben is lowered down at the base of the Pliocene by more than 500 metres (although the rifting process here is at its minimum intensity). A small piece of a seismic line has been reproduced to show the Medina Graben and the various features that make it significant. It appears as Figure No. 1 following page III-8 of this paper.

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[1] A location map of seismic lines may be found as Figure No. 8 following Part II of this *Technical Annex*.

[2] See fn. 1 to p. III-1 above.

The Medina Bank, even if affected by faulting during the Neogene-Quaternary phase, preserved its basic integrity and its regional structural character. The geological history of the area of the Medina - Melita Banks area has been continuously connected to the evolution and basin deposition of the area south of the Sicily Channel. From the Medina - Melita Banks southward to the Libyan coast there is a continuity of stratigraphic characteristics from the Mesozoic (over 100 million years ago) to the present time.

3. Other Points of Specific Relevance

Certain geological elements are relevant to mention here in showing the geological ties between the Malta Islands, the Ragusa-Malta Plateau and Sicily. (The geomorphological connection between these features is so evident as not to require comment.)

A. Malta's Close Connection with Sicily and the Ragusa-Malta Plateau

The Maltese Islands structurally belong to the Ragusa-Malta Plateau area, which is separated from the Medina Plateau by a rift zone and, more particularly, by the Medina Graben, as mentioned above. In the Upper Miocene - Early Pliocene — that is about 10 million years ago — the Maltese Islands emerged. Examining with detail the structural setting and evolution of the Malta Graben and the Maltese Islands, it is possible to make some important remarks:

First, the Maltese Islands are structurally a *horst* and the Islands were generated by a tilting of the block lying on the north side of the Malta Graben.

Second, the area between southern Sicily (Ragusa) and Malta, limited to the east by the Sicily-Malta Escarpment, is constituted by a very thick Mesozoic sequence covered by Cainozoic sediments progressively thinning from west to east and from south to north. In southeast Sicily and near the limit of the Sicily-Malta Escarpment, Mesozoic outcrops. The whole Ragusa-Malta area shows gentle undulations trending mostly northeast/southwest in the northern part. But also less pronounced northwest/southeast trends can be identified. Faults are relatively rare compared to the area of major *grabens* (Malta, Pantelleria, Linosa and Medina) and they are in general older because mostly associated with the Mesozoic extensional phases (over 100 million years ago). (See Figure No. 7.)

In some cases, the Paleocene fault systems stopped their activity during the first generating extensional phase. In other cases, they were renewed by successive phases. Regionally, the Ragusa-Malta Plateau area can be considered as an asymmetric ridge trending north-south and affected by a clear and remarkable tilting movement near the Sicily-Malta Escarpment. Such tilting is associated with the main extensional phase which is here that of Middle Jurassic (around 150 million years ago), but the uplifting and tilting movements of the Plateau also continued into the Cretaceous and, much more moderately, into the Neogene phase (approximately 10 million years ago).

The whole Ragusa-Malta Plateau area is affected by intense volcanic activities which occurred at every regional stretching phase. Four main phases can be identified: Middle-Upper Triassic, Middle Jurassic, Upper Cretaceous and Neogene-Quaternary. In this area all phases produced intense activities with thick to very thick volcanic intervals. Particularly impressive is the Middle Jurassic phase. In fact, the relative interval is almost completely constituted by igneous rocks. But also the Middle-Upper Triassic shows a remarkable volcanic activity with many basaltic intervals in "Streppenosa" formation (Black Shale).

However, as shall be seen below, the Ragusa-Malta Plateau area is characterised by older volcanism, the most conspicuous period being in the Middle Jurassic, with the volcanics rock lying deep below the surface of the earth, between two to four kilometres beneath the surface. In fact, the Middle Jurassic interval (that is the present layer beneath the surface of the earth corresponding to this period) is almost entirely composed of igneous rocks reflecting this old period of volcanism throughout this area. In contrast, the rift zone area of the Sicily Channel is marked by young volcanism, mainly of Late Miocene to Quaternary Age (less than 10 million years ago).

B. The Rift Zone of the Sicily Channel and Its Young Volcanism

Over the past 230 million years approximately, the volcanism in the Pelagian-Ionian Sea area has fallen into roughly four main phases mentioned in *A.* above. The phases are associated with corresponding phases of extensional dynamics occurring at roughly the same time and in the same areas. (The author's recent study deals with this data in considerable detail.) As has been mentioned above, the principal and rather remarkably intensive volcanism in the Ragusa-Malta Plateau area occurred in the middle of the Jurassic (approximately 150 million years ago), although more limited volcanic activity has taken place in each of the four main periods.

Rifting movements of the Neogene-Quaternary phase are associated with prominent volcanic activity. The most important outcropping volcanic shows are those of the Pantelleria and Linosa Islands. But magnetic anomalies indicate that volcanism is present all along the Sicily Channel rift zone and that this volcanism is young and near the surface. Aside from establishing the importance and depth of the rifting, this evidence of young volcanism stresses the recency of the rifting and that it continues today. A typical example of volcanism in the rift zone is the volcano lying between the Malta and Medina Channels to the southeast of Malta and to the northwest of the Medina Bank. This magnetic body is associated with a prominent magnetic anomaly. The Medina Mounts to the east, on the evidence of prominent magnetic anomalies, were also affected by volcanism (see Figure No. 3 following page III-8 of this paper).

Seismic evidence of igneous extrusion are identified on several points of major *grabens* in the Sicily Channel such as the Pantelleria, Linosa, Malta and Medina Grabens. Other shows are evident on the Sicily-Malta Escarpment, and near the Medina Mounts (otherwise known as the Medina (Malta) Ridge. Very clear seismic evidences of young (Neogene-Quaternary) volcanic activity exist in numerous points in the Ionian Abyssal Basin and the Sirt Rise.

All these data show that this young phase of volcanism produced its effect on a vast part of the studied area. However, the area where this phase caused by far the most remarkable geomorphological modifications is in the Sicily Channel area. All major *grabens* such as those of Malta, Linosa, Pantelleria and Medina were generated by the extensional geodynamics marked by this volcanism.

4. Discussion of Figures

Aside from Figure No. 1, a number of similar seismic figures are appended to this report following page III-8. These Figures (from Finetti (1982)) show objective geophysical data which contain interpretations of evidence that is clear to geoscientists. There can be no question about the intense faulting process of the Sicily Channel; these figures have been prepared to make this fact evident to a non-expert just as schematic diagrams might otherwise have done.

Figure No. 2 shows the Sicily-Malta Escarpment. Figure No. 3 shows the Medina Mounts: Medina (Malta) Ridge. Figure No. 4 shows the Medina Bank and Escarpment.

Figures Nos. 5 and 6 have been included to show the extent and importance of the Sicily Channel rift zone. These figures require some explanation for a full understanding of their significance. The Figures, as the captions reveal, show the effect of the rift zone (coloured in yellow) on layers of the present subsoil underlying the Sicily Channel at the Top of the Miocene[1] (Figure No. 5) and at the Top of the Mesozoic[2] (Figure No. 6).

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[1] Approximately 10 million years ago.

[2] Approximately 100 million years ago.

Three principal points are intended to be illustrated by Figures Nos. 5 and 6, points already touched on in the preceding text. *First*, the extent of the rift zone of the Sicily Channel is shown extending all the way east to divide the Sicily-Malta and the Medina Escarpments and to join up with the Medina Mounts (the Medina (Malta) Ridge). *Second*, the depth of the rifting is shown on these figures. It is clear that the rifting process involves both the entire lower crust and the upper mantle of the Earth (see, for example, the big gravity anomaly all along the Sicily Channel shown in Finetti (1973)). Historically, of course, neither Malta nor the rift zone existed before this rifting process began (that is during the Mesozoic which is depicted by Figure No. 6); but the faulting structure in the rift zone now actually extends into this much older layer of strata, and even below, to the point that magmas rise up through the Earth's crust in the form of volcanism. (Malta has been sketched in on Figure No. 6 to show its ultimate location, not because it then existed.) *Third*, the presence of young volcanism is shown along the rift zone out along the Medina Mounts — the Medina (Malta) Ridge — as well as in the Ionian Abyssal Plain to the north of the Mounts and in the Sirt Rise to the south. This young volcanism along the rift zone illustrates the importance as well as the recency and currency of the rifting process.

Finally, Figure No. 7, consisting of four separate figures showing Seismic Line MS-19, has been described and discussed at pages III-3 and III-4 above.

PART IV

THE SEA-BED MODEL OF THE CENTRAL MEDITERRANEAN

(The Model was prepared under the supervision of Dr. William B.F. Ryan by Thérèse Landry and Mary Ann Luckman at the Lamont-Doherty Geological Observatory of Columbia University, Palisades, New York. Two photographs of the Model appear following page IV-2. The first is a north/south view of the Model; the second is taken from the east and shows the importance of the Sicily-Malta and Medina Escarpments.)

1. Source of Data and Area Covered

This Model of the Central Mediterranean seafloor employs as its base the International Bathymetric Chart of the Mediterranean prepared by the Intergovernmental Oceanographic Commission. This Chart is at a scale of 1:1,000,000. The region bounded by longitudes of 11°E and 20°E and latitudes of 30°N and 38°30′N was selected as the area to be covered.

2. Contouring—Replotting at Reduced Scale

Segmented into a number of workable sections, the bathymetric contours were redefined as x, y numbers on a Hewlett Packard digitizer and computer. The contour data has been stored on flexible disks which facilitates future and multinatured work with the information. For the purposes of model-making, the files — each representing a map section — were merged to replot the chart at the desired scale of 1:750,000.

3. Use of Vertical Exaggeration

The creation of the three dimensional Model entailed applying a vertical exaggeration of 25 times the horizontal scale of the map (1:750,000). This results in a more informative representation of the vertical relief of the earth's surface. The region exhibited has relief of approximately seven kilometres and is only the thin outer part of the 6,371 kilometre radius of the earth.

A three dimensional model with no vertical exaggeration would exhibit relief of about one centimetre or less than 1/2″. Increasing vertical exaggeration, a common practice in geomorphologic figures, to a magnification of 25, displays relief to nearly 30 centimetres (12″) in the Model. This allows easy comparison of the relative depths, heights, and gradients of the earth's surface.

4. Other Technical Details

The "scaffolding" is constructed of Philippine mahogany marine plywood and balsawood. A thickness of 1/4″ represents the 200 metre interval, while 1/8″, 1/16″ and 1/32″ serve as 100, 50 and 20 metre intervals respectively. Materials and thickness were selected in accord with scale and vertical exaggeration desired as well as tolerance, workability and weight of the material.

A mixture of plaster of paris and lime was used to smooth the contour edges. This filling-in of terraces does not alter the accuracy of measured depths, but rather results in a more realistic representation of the seafloor surface. The barely discernable contour edges guide the colour-coding of topography and bathymetry: on land darkening shades of brown distinguish intervals of 0-1000 metres, 1000-2000 metres, 2000-3000 metres and 3000 metres plus; and at sea, shades of blue grow darker with increasing depths of 0-500, 500-1000, 1000-2000, 2000-3000, 3000-4000 and 4000 metres and greater. The horizontal accuracy of these intervals has been ensured by a levelling device.

The mahogany siding serves an aesthetic, protective purpose and is not intended to portray topographic profiles.

As a whole, the Model measures roughly 118 x 120 centimetres (44" x 45"). It is divided into two pieces for easier shipping and handling.

VOLUME II

DOCUMENTARY ANNEXES TO THE MEMORIAL OF THE LIBYAN ARAB JAMAHIRIYA

Annex 1

SPECIAL AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALTA AND THE GOVERNMENT OF THE LIBYAN ARAB REPUBLIC FOR THE SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE OF DIFFERENCE, IN ARABIC AND ENGLISH

[See supra, *Special Agreement, p. 8 and p. 5]*

Annex 2

INSTRUMENTS OF RATIFICATION EXCHANGED ON 20 MARCH 1982: *(a)* LIBYAN INSTRUMENT OF RATIFICATION; ENGLISH TRANSLATION; *(b)* MALTESE INSTRUMENT OF RATIFICATION; ARABIC TRANSLATION

[See supra, *Special Agreement:* (a) *p. 16 and p. 14;* (b) *p. 14 and p. 15]*

Annex 3

JOINT LETTER OF NOTIFICATION OF 26 JULY 1982

[See supra, *Special Agreement, pp. 3-4]*

Annex 4

LETTERS EXCHANGED ON 23 MAY 1976: *(a)* MALTESE LETTER IN ENGLISH AND ARABIC; *(b)* LIBYAN LETTER IN ARABIC AND ENGLISH

[See supra, *Special Agreement:* (a) *p. 9 and p. 11;* (b) *p. 10 and p. 9]*

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Annex 5

PAGES 3261 TO 3264 OF WÜST, "ON THE VERTICAL CIRCULATION OF THE MEDITERRANEAN SEA"

Abstract. In this analysis of about 600 stations (200 winter and 400 summer stations) the first attempt is made to study, with the help of the "core method", the mean steady state of the deep circulation within the whole expanse of the Mediterranean, divided by sills into eight basins. In spite of the aperiodic fluctuations, we have got some indications of the seasonal variations of the Levantine intermediate current, which has its maximum in the winter. At the surface, six water types are formed which spread out, either by measurable currents or by weak advectional processes, in six core layers and cause renewal and ventilation all the way to the bottom of the basins. On the whole, the Mediterranean vertical circulation offers, by the transformation of the entering Atlantic water type to the Mediterranean types, an excellent example of interaction between atmosphere and sea. This is demonstrated by a three-dimensional block diagram of the vertical circulation and of the salinity distribution during winter.

By its intercontinental situation in the midst of a subtropical semiarid climate and by its morphological structure, the Mediterranean Sea offers a unique field for the application of the so-called "core method". This method permits one to follow the spreading and mixing processes of the main water masses along their curved core layers, characterized by intermediate maxima or minima of salinity, oxygen, and temperature. In this way the main features of the mean steady deep circulation can be delineated in the whole expanse of this enclosed sea and for different seasons.

By means of the vertical distribution of salinity, oxygen, and temperature we can identify four different core masses: (1) The *near-surface water of Atlantic origin* between 0 and 75 m depth (2) the *intermediate water* between 200 and 600 m, (3) the *deep water* between 1,500 and 3,000 m; and (4) the *bottom water* at depths to 4,200 m. I should like to demonstrate with four maps and four diagrams the main results of our recent study on the deep circulation for which about 600 stations (about 200 winter and 400 summer stations) of 12 research vessels are available [Wüst, 1960, 1961].

The first core map (Fig. 1) concerns the *Levantine intermediate water*, characterized by the maximum of salinity, which, except for the source region in the northern Levantine basin, is found in the whole Mediterranean at various morphologically influenced depths between 200 and 600 m. It is formed in February and March on both sides of Rhodes, where at the surface there is a combination of low temperatures (about 15°) and high salinities (39.1 %), i.e., conditions favorable for a vertical thermal-haline convection reaching to a depth of about 100-200 m. From this winter source region of high salinity the Levantine intermediate water spreads out within the core layer to all western basins.

After having passed the central Ionian basin the main flow goes over the Sicilian ridge through the Strait of Sardinia and along the continental slope of North Africa. This flow attains more and more the character of a real boundary current with measurable velocities, which we call the *Levantine intermediate* *current*. It finds its continuation in the outgoing undercurrent through the Strait of Gibraltar where this undercurrent in 275-m depth reaches the high velocities of more than 100 cm/sec.

In the summer the Levantine intermediate current is perceptibly weaker than in winter (Fig. 2). But apart from this fact the main trends of the distribution of the salinity within the core layer remain the same in summer as in winter, which confirms the belief that the inhomogeneities in the observation material and the aperiodic fluctuations of salinity and other disturbing effects are of second order of magnitude.

The fact of a seasonal variation in the strength of the Levantine intermediate current is clearly demonstrated by the two longitudinal sections of salinity along the main axis of its flow, as shown in Figure 3. The near-surface Atlantic undercurrent to the east and the Levantine intermediate current to the west represent the most important branches of the Mediterranean deep circulation. The spreading and the mixing processes of the latter can also be described by means of *T*/*S* curve for winter and summer, as shown in Figure 4.

One end point of the winter normal curves represents the conditions at the source region.

Annex 6

PAGES 288 AND 289 OF STANLEY *ET AL.*, "STRAIT OF SICILY DEPOSITIONAL RATES AND PATTERNS, AND POSSIBLE REVERSAL OF CURRENTS IN THE LATE QUATERNARY"

[288]

some exceptions) generally decrease with depth, i.e., from the shallow banks to the neritic-bathyal platform to the deep basins. With the C data at hand (Fig. 5), it appears that deposition in all environments, except in the two deep basin cores (Ges-63, 109) that have higher ash and turbidite layers, has been relatively constant in the late Quaternary. However, there is a significant difference in the age of sediments at the tops of cores in the different environments. In shallow banks, the tops of some cores are truncated in the late Pleistocene to early Holocene; in the neritic-bathyal platform, in the early Holocene; and in the deep basins, sediments have accumulated on a fairly continuous basis from the Pleistocene until the recent (Figs. 3, 5).

The vertical lithofacies sequences in the shallow-bank and neritic-bathyal environments can be closely related with the Quaternary dynamics. The upward-coarsening and upward-fining sequences in shallow environments clearly reflect bottom conditions related to eustatic oscillations; i.e., shell bank concentrations increased as sea level dropped, banks became shallower and bottom current activity intensified, and vice versa. On some banks, fine-grained sediments have accumulated since the rise of sea level; on others there has been truncation and non-deposition since the last eustatic low stand.

At intermediate depths, bioturbation is evident throughout the cores. This homogenization shows that rates of reworking by benthic organisms have been relatively more important than sediment input and accumulation throughout the late Quaternary. Equally significant are the C dates which indicate that oceanographic conditions directly affecting the sea floor changed markedly between the late Pleistocene and the early Holocene, and that non-deposition and/or erosion have prevailed since about 10,000 years B.P.

In contrast, none of the above changes are noted in the deep Strait basins. Rates of sedimentation approximate those on the neritic platform but a somewhat lower benthic population on the basin floors has resulted in a relatively lower degree of bioturbation and better preservation of stratification. Furthermore, there are no obvious changes in either lithofacies sequence patterns or sedimentation rates between the late Pleistocene and recent, a period of at least 30,000 years. Although the depth of the three deep Strait basin plains (1300-1700 m) is well below that at which sapropel layers are found elsewhere in the central (Adriatic) and eastern (Ionian, Levantine basins) Mediterranean, no sapropels or other distinct evidence of stagnation are noted in the basin cores. On the contrary, structures made by benthic organisms are commonly observed indicating that the deep narrow Strait basins remained sufficiently oxygenated to support benthic population throughout the late Quaternary. Thus, it appears that vertical mixing prevailed on an almost continuing basis as a result of water mass movement across the Strait of Sicily at a time when sapropels were accumulating under stagnant conditions in the adjacent eastern Mediterranean (cf., note sapropel at top of core LY-II-3).

In this respect, core LY-II-6A west of the Strait narrows (Fig. 3) is of interest. The rate of sedimentation here is higher than in many other sectors. The mud at the top of core LY-II-6A is dated as early Holocene (about 11,000-10,000 years B.P.), or well after sea level had begun to rise. Inasmuch as this core lies at a depth of 755 m, the eustatic oscillation alone is not believed to be the primary factor for erosion or non-deposition in this sector. The region just west of the Strait narrows may be critical for interpreting Quaternary oceanographic fluctuations since it occupies a zone of particularly strong current régime. Currents accelerate in the constricted narrows and decelerate as the Strait widens with a probable increase in deposition away from the narrows. Thus, we would expect that cores collected in the vicinity of the narrows would provide the best record of water mass-bottom current fluctuations in the recent geological past.

It is probably not accidental that there is an apparent correlation between the time of truncation of core tops on the Strait platform and that of protosapropel and sapropel formation (sapropels are dated at about 9000-7500 years B.P.; cf., Ryan, 1972; Van Straaten, 1972) in the eastern and central Mediterranean. Independently, other workers (Colantoni and Borsetti, 1973) record microfaunal changes in the Linosa and Malta basins at about this period. One possible explanation for these early Holocene depositional and faunal changes is a temporary short-term reversal of surface and deeper water flow (Olausson, 1961; Mars, 1963; Huang et al., 1972; Müller, 1973; Nesteroff, 1973; Huang and Stanley, 1974; and others). At present, less dense water flows (>30 cm/sec) southeastward above northwestward-flowing (32 cm/sec) Levantine water (Molcard, 1972). We illustrate an early Holocene current reversal model that depicts the northwestward movement of less dense surface water in response to the early Holocene climatic evolution (Fig. 6). Surface water salinity and temperature conditions (Farrand, 1971) certainly were altered in the Mediterranean during the warming phase of the climatic curve, but the degree of stratification resulting from this remains a point of conjecture (Letolle and Vergnaud-Grazzini, 1974).

Nevertheless, our study does show (1) that the sea floor of the Strait of Sicily remained ventilated and swept by currents at a time when anaerobic conditions prevailed in the Ionian-Levantine basins east of the Strait, and that (2) the Strait did not completely block circulation between the eastern and western Mediterranean basins. We conclude that our observations are best explained in terms of early Holocene paleo-oceanographic changes including possible reversal of currents. The latter concept requires further testing and we suggest that the Strait of Sicily, the major sill separating sapropel rich eastern Mediterranean basins from non-sapropel basins in the west, is clearly one of the key sites in which to investigate this problem.

Annex 7

PAGES 445 AND 453 OF WINNOCK, "STRUCTURE DU BLOC PÉLAGIEN"

[445]

Abstract

The paper deals mainly with the general structure of the pelagian block. The seismic gives us, with the top Miocene, a very useful marker with which to show the regional structure. This is because it is a strong, characteristic, and very continuous marker.

Fig. 2 is a isobathymetric map of this marker at the top of the Upper Miocene or base of the Pliocene. Fig. 3 shows the isopacks of the Plio-Quaternary beds. Finally (Fig. 4) there are two geological sections, with an exaggerated vertical scale, showing the structure of the Pelagian Sea between Sicily and the African coast.

The principal features are:

(1) The existence of a series of "Tunisian Trenches" forming together with the already well known Sicilian Channel, a structural complex throwing light on the recent distensive history of the region.
(2) The importance of the post-Miocene tectonics. Faults of Pliocene age, and more recent ones, have cut into horsts and grabens large areas of the Pelagian Sea.
(3) The post-Miocene subsidence of the Gela Basin: the Messinian beds indicate there are differences of level of 3,000 m, and perhaps up to 5,000 m.
(4) These major post-Messinian events leave little room for any hypotheses suggesting that the Mediterranean had already its present day morphology at the time of the "Messinian salinity crisis".
(5) The thickness maps of the Plio-Quaternary sediments are a useful guide for bringing together the fragmentary evidence available about the present day sedimentary rhythm.

There is also a special emphasis concerning the Siculo-tunisian troughs. The 500 m isobath clearly defines the limits of the three troughs of the Sicilian Channel: Pantellaria (– 1,300 m), Linosa (– 1,600 m) and Malta (– 1,700 m). The Channel is separated from the Caltanissetta-Gela Basin in the north by the Adventure Bank-Madrepore Bank-Malta Bank alignment. In the south the Channel is separated from the Gabes-Ashtart Basin by the Tunisian plateau.

The Sicilian Channel is characterized by a rather strong fault structure developed during the Pliocene at the expense of the sedimentary surface (Messinian) or erosion surface (Terminal Miocene). During the Lower Pliocene an extremely dense block faulting affected the Plateau. During the Upper Pliocene subhorizontal sedimentary beds,

[453]

Le plateau Tunisien est une zone stable et peu subsidente où le Miocène se trouve à moins de 200 m. La sédimentation pliocène est donc d'épaisseur réduite.

Les failles ont généralement un rôle encore modeste. Toutefois, quelques grabens apparaissent à l'Est : sillon Tripolitain, fossé de Jarrafa (Fig. 5 B) ou à l'Ouest : fossés de la région de Mahdia. Or, à la différence des sillons orientaux, caractérisés par un déficit sédimentaire et visibles en bathymétrie, les sillons occidentaux, comblés, ne sont pas décelables sur les cartes marines. Pourtant ils ont, les uns et les autres, une profondeur pouvant dépasser 1000 m (Fig. 2).

Les îles de Lampione et de Lampedusa marquent la limite nord du plateau Tunisien.

Le passage du plateau Tunisien au chenal de Sicile se fait par une terrasse faillée très complexe, comprise entre les isobathes −200 m et −500 m où se trouvent les hauts-fonds de Birsa, d'Halk et Menzel, de Babouch (Fig. 5 C), de Bouri.

4. *Chenal de Sicile*

C'est une unité géographique déprimée, d'orientation NW-SE, très faillée, caractérisée par la présence de grands fossés tectoniques et d'une activité volcanique quaternaire. Il est circonscrit par l'isobathe −500 m et s'étend du large du Cap Bon au Sud de Malte sur 350 km, avec une largeur de 100 km.

Trois fossés et deux îles d'origine volcanique sont les éléments morphologiques marquants du chenal de Sicile :

— le fossé de Pantellaria dépasse 1300 m de profondeur ;
— le fossé de Linosa approche 1600 m ;
— le fossé de Malte, le plus long et le plus profond, dépasse 1700 m ;
— l'île de Pantellaria culmine à 836 m ;
— l'îlot de Linosa, de dimensions plus modestes, a pour point culminant le Mt Volcano, 195 m.

Annex 8

MAP DEPICTING SETTLEMENT PATTERNS IN MALTA

[Not reproduced]

Annex 9

MAP SHOWING THE POSITION OF LIBYA AND MALTA IN THE CENTRAL MEDITERRANEAN

[Not reproduced]

Annex 10

TOPOGRAPHIC MAP OF LIBYA

[Not reproduced]

Annex 11

PAGE 52 OF MORELLI *ET AL.*, "BATHYMETRY, GRAVITY AND MAGNETISM IN THE STRAIT OF SICILY AND IN THE IONIAN SEA"

5. GEOLOGY

5.1. *Strait of Sicily.*

The Strait of Sicily has been studied from the geologic-tectonic point of view by Castany (1956) and by Burrolet (1967); from the geophysical point of view by Zarudzki (1972), who considered also the work of previous geophysicists, summarized by Harrison (1955) and Gantar *et al.* (1961).

According to Castany (1956), Tunis and Sicily constitute a common orogenic frame, an out-building of the African stand, affected by transversal irregularities. Although this "mosaic structure" allowed the compartment working, it shows common features, and both areas produce great analogies.

Annex 12

PAGE 3139 OF DEWEY *ET AL.*, "PLATE TECTONICS AND THE EVOLUTION OF THE ALPINE SYSTEM"

Compressional boundaries result in three basic types of tectonic features. First, the simple deep-sea trench-island arc system such as the Aleutians and Tonga-Kermadec; second, the more complex trench-volcanic arc continental margin system such as the Peru-Chile trench and the landward complex of the Andes; and third, the compressional interaction between two continental portions of plates such as the India-Asia collision that produced the Himalayan orogeny.

It has been proposed by various workers (Argand, 1916; Heim, 1922; Staub, 1924) that the causal mechanism for the Alpine orogeny in Europe was compressional motion between Africa and Europe. Reconstructions of Laurasia (notably that of Bullard and others, 1965) show an eastward-widening Tethyan seaway between Europe and Africa. As Europe and Africa drifted away from North America along separate paths, the seaway slowly closed. It is this closure that some previous workers have described as the cause of the Alpine orogeny.

In the framework of the theory of plate tectonics, this would appear to be the correct mechanism, but two problems previously precluded a detailed analysis of the orogenic history of the Alpine system in terms of the relative motion of Africa with respect to Europe. First, the history of drift in the Atlantic was not known, and hence the temporal and spatial pattern of relative motion between Africa and Europe could not be determined. Second, there are at present a number of microplates between Africa and Europe, each in motion with respect to all adjacent plates (McKenzie, 1970). The present motion between these plates is complex (Fig. 1). Although the present relative motion of Africa with respect to Europe is northward compression, the relative motion that is occurring at the southern border of Europe is not simply compressional but varies due to the interaction of the intervening microplates. The situation may have been equally complex during much of the history of Tethys. There probably never was only a single plate boundary between Africa and Europe; but rather, there was at all times a network of compressional, extensional, and transform boundaries.

Smith (1971) recently attempted an analysis of the Alpine system based on the assumption.

Annex 13

MALTESE FISH INDUSTRY ACT, 1953

ACT No. XII OF 1953

An Act to provide for regulating the catching, landing and sale of fish, and for purposes connected therewith.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Malta, as follows:

1. This Act may be cited as the Fish Industry Act, 1953.

2. In this Act, unless the context otherwise requires:

"Minister" means the Minister who, for the time being, is responsible for the Fisheries Department;

"Malta" means the Island of Malta and its Dependencies;

"Fishing boat" means a vessel of whatever size and design, and in whatever way propelled, registered in Malta which is, for the time being, used for the purpose of fishing;

"Foreign fishing boat" means a vessel of whatever size and design and in whatever way propelled, not registered in Malta which is, for the time being, used for the purpose of fishing;

"Fishing" means the art of catching every description of fish or shellfish or corals or plants found in the sea;

"Fishing implement" means any nets, lines, floats, lamps or other instruments usually used for the purpose of fishing;

"Skipper" includes, in relation to any vessel the person for the time being in command or charge of that vessel.

3. (1) It shall be lawful for the Governing Council to make, vary or repeal regulations for carrying into effect the provisions of this Act, and without prejudice to the generality of this power to make regulations for all or any of the following purposes, and to establish the penalties not exceeding in any case a fine (multa) of fifty pounds to which any offender of any of the Regulations made under this Act shall be liable:

(a) for the registration of fishing boats and of persons engaged in fishing;

(b) to regulate the use of fishing implements, for preserving order among fishermen and preventing them doing damage to the fishing implements of others;

(c) to regulate the landing and storage of fish, its preservation and its utilization in the manufacture of by-products;

(d) to regulate the sale and distribution of fish and the licensing of persons connected therewith;

(e) to regulate the use of boatslips, fishing boat moorings and other harbour facilities intended for the use of fishing boats;

(f) for maintaining order, sanitation and cleanliness in the wholesale fishmarket;

(g) for prescribing the requirement of a licence from the Minister in re-

spect of persons acting as "skipper" or "second hand" of any class or description of fishing boats specified in the regulations and the terms and conditions on or subject to which such licences shall be issued;

(2) Regulations made under this Act shall be laid on the Table of the Legislative Assembly as soon as may be after they are made, and if the Legislative Assembly, within a period of twenty days, beginning with the day on which any such regulations are laid before it resolves that they be annulled or amended the same shall cease to have effect or shall be so amended but without prejudice to anything previously done thereunder or to the making of any new regulations. In reckoning any period for the purpose of this sub-section no account shall be taken of any time during which the Legislative Assembly is dissolved or prorogued or during which it is adjourned for more than four days.

4. (1) No person on board a foreign fishing boat shall fish or attempt to fish while the boat is within the territorial waters of Malta.

(2) If a foreign fishing boat, having on board fishing implements of any kind, anchors without just cause (the proof whereof shall lie on the skipper) anywhere within the territorial waters of Malta, except inside the Valletta Grand Harbour, the skipper of the boat shall be deemed to be fishing.

(3) In the event of any contravention of this section, besides the fine imposed by this Act, the Court, shall, on conviction, order the forfeiture of any fish that may be on board of the boat concerned at the time of the offence.

5. (1) Fresh fish, other than fish caught by a fishing boat registered in these Islands, may not be landed in Malta without the previous permission, in writing, of the Controller of Fisheries.

(2) A permit issued under this section shall be valid only for the day on which it is issued, unless otherwise stated on the permit, and may contain such provisions as may appear necessary to the Controller of Fisheries. Such permit does not exempt the holder from the provisions of the Customs Ordinance (Chapter 60) and other Statutory laws regarding the landing of goods in these Islands.

(3) The skipper of a vessel from which fish is landed and the consignee of such fish or either of them shall furnish to the Controller of Fisheries all the information that may be required as regards the origin, sale and disposal of any fish landed.

(4) Fresh fish, other than fish caught by a fishing boat registered in these Islands, shall be landed only at the Wholesale Fishmarket, Old Barriera Wharf, Valletta: provided that the Controller of Fisheries may, at his discretion, allow fish to be landed elsewhere in the presence of a Fishery Officer.

(5) Any person who contravenes or fails to comply with any terms or conditions of a permit issued under this section shall be guilty of an offence under this Act and any person who lands fish in contravention of this section, besides being liable to the fines imposed by this Act, shall, on conviction, also suffer the forfeiture of the fish so landed.

(6) A fee of five shillings shall be paid at the Fisheries Department in respect of each permit issued under this section.

6. (1) The Minister may, by an Order published in the Government Gazette, prohibit, limit or regulate the importation or landing in Malta of fish which has been frozen, chilled, canned, salted or which has undergone any process of curing or preservation.

(2) Without prejudice to the generality of the power conferred by this section, an order made under this section may determine for any such period as may be specified in the order:

(a) the description of such fish as aforesaid which may be landed in Malta;

(b) the quantity of such fish, or of any description thereof, which may be so landed, and under what conditions such fish may be landed; and the order may contain such provisions as appear to the Minister to be necessary for securing the due operation and enforcement of the scheme of regulation in the order.

(3) Any person who contravenes or fails to comply with any provisions contained in any order made under this section shall be guilty of an offence under this Act.

7. Where any provision of this Act confers a power to make an order, the power shall be construed as including a power, exercisable in the like manner, to vary or revoke the order by a subsequent order.

8. Any licence, permit or permission granted for the purpose of any Regulations made under this Act, may be revoked at any time by the authority or person empowered to grant it.

9. (1) The Governor-in-Council may appoint Fishery Officers to ensure that the provisions of this Act and any Regulations and Orders made thereunder are strictly complied with.

(2) Fishery Officers appointed as aforesaid shall, in the discharge of their powers and duties, have all the rights, powers and duties vested in or imposed on Officers of the Malta Police.

10. (1) For the purpose of enforcing the provisions of this Act and any Regulations and Orders made thereunder, a Fishery Officer may, with respect to any foreign fishing boat when within territorial waters, and with respect to a locally registered fishing boat anywhere exercise the following powers:

(i) go on board;

(ii) require the skipper to produce any certificate of registry and other documents pertaining to the boat;

(iii) seize such documents and order the skipper to take his boat into harbour.

(2) For the purposes of this section any Police officer or any Officer of Customs and Excise shall exercise any of the powers conferred by this section on Fishery Officers.

11. If any person obstructs any Fishery Officer in acting under the powers conferred by this Act, or refuses to comply with any directions lawfully made, or to answer any question lawfully asked, by any Fishery Officer in pursuance of this Act, such person shall be guilty of an offence against this Act:

Provided that no person shall be compellable to answer questions which may criminate him.

12. Where any offence against this Act has been committed by any person on board a fishing boat or on board a foreign fishing boat, the skipper of such boat shall in every case be liable to be deemed guilty of such offence:

Provided that if he proves that he issued proper orders for the observance, and used due diligence to enforce the observance, of this Act, and that the offence in question was actually committed by some other person without his connivance, he shall not be liable to any punishment.

13. Any person guilty of an offence under this Act shall, on conviction, be liable to a fine (multa) of not less than £10, but not exceeding £50 for each such offence.

14. Where the fact constitutes a more serious offence under any other law, the provisions of that law shall apply in lieu of this Act.

Annex 14

(a) MALTESE PETROLEUM (PRODUCTION) ACT, 1958; *(b)* MALTESE PETROLEUM (PRODUCTION) (AMENDMENT) ACT, 1965

(a) MALTESE PETROLEUM (PRODUCTION) ACT, 1958

ACT No. IV OF 1958

An Act to vest in the Maltese Government the property in petroleum and natural gas within these Islands and to make provision with respect to the searching and boring for and getting of petroleum and natural gas, and for purposes connected with the matters aforesaid.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Malta, as follows:

1. This Act may be cited as the Petroleum (Production) Act, 1958.

2. In this Act —

"Licence" means a licence granted pursuant to this Act and includes a petroleum mining concession;

"Malta" means the Island of Malta and its Dependencies and the land underlying the sea waters adjoining the same;

"Minister" means the Prime Minister of Malta and includes such other Minister or Officer as may be authorised by him from time to time for any of the purposes of this Act;

"Petroleum" means all natural hydrocarbons liquid or gaseous including crude oil, natural gas, asphalt, ozokerite and cognate substances and natural gasoline.

3. (1) The property in any petroleum in its natural condition in strata wheresoever existing in Malta is hereby vested in the Maltese Government and the Maltese Government shall have the exclusive right of searching and boring for and getting such petroleum.

(2) Any person, who, without a licence granted under this Act searches or bores for or gets petroleum shall be guilty by reason merely of having done so and without prejudice to prosecution under any other provision of law, of an offence and shall be liable on conviction to a fine (multa) of not less than two hundred pounds but not exceeding five hundred pounds for each day during which the offence continues, which fine (multa) shall also be applicable for the purposes of subsection (3) of section 389 of the Criminal Code (Chapter 12) and in addition all petroleum so gotten shall be forfeited to the Maltese Government. Nothing in this Act, however, shall be construed as imposing any penalty on any person where in the course of lawful boring in search of water or of other lawful operations, petroleum is set free.

(3) The prohibitions imposed by or under this Act and the rights by and under this Act vested in the Maltese Government, in the Minister, in any Officer of the Government, and in any holder of a licence under this Act shall have full effect notwithstanding the provisions contained in section 360 of the Civil Code (Chapter 23) or in any law which may be incompatible with such prohibitions and rights:

Provided that nothing in this Act shall be construed as conferring, or as enabling the Minister to confer, on any person, whether acting on behalf of the Maltese Government or not, any right which he does not enjoy apart from this Act, to enter on or interfere with land.

4. (1) The Minister shall have the power to grant to such persons as he thinks fit licences to search and bore for and get petroleum, including petroleum mining concessions.

(2) Any such licence shall be granted for such consideration (by way of royalty and/or otherwise) as the Minister may determine, and over such areas, for such periods and upon such other terms and conditions as the Minister thinks fit.

(3) Without prejudice to the generality of the last preceding subsection, the terms and conditions of any such licence may in particular, if the Minister so determines include provision for the following matters:

(i) the rates of royalties to be paid in respect of any petroleum won in the exercise of the rights conferred by the licence, the method of calculation of the amount of such royalties and the manner of payment thereof;

(ii) the surface rents to be charged in respect of the areas of the licence;

(iii) the working obligations attaching to the licence;

(iv) the division between the Maltese Government and the licensee of profits derived from the sale or disposal of petroleum won in the exercise of the rights conferred by the licence;

(v) the supply from time to time of information by way of returns, reports, notices, records of operations or otherwise.

(4) The Minister shall as soon as may be after granting a licence under this section, cause a notice of the fact to be published in the Government Gazette stating the name of the licensee and the situation of the area in respect of which the licence has been granted.

5. (1) The Minister may make regulations generally for regulating the exploration, prospecting and mining for petroleum and for carrying out the provisions of this Act and in particular, but without prejudice to the generality of the foregoing, for fixing the fees chargeable in respect of licences and for regulating the drilling for and production of petroleum and the conservation of the petroleum resources of Malta, and such regulations may also provide for establishing the penalties for the breach of any of their provisions, which penalties may include a fine (multa or ammenda) exceeding the maximum provided for in the Criminal Code (Chapter 12), awardable in the case of continuing offences for each day during which the offence continues and applicable also for the purposes of subsection (3) of section 389 of the Criminal Code (Chapter 12).

(2) Any Regulations made under this section shall be laid before the Legislative Assembly as soon as may be after they are made, and if the Legislative Assembly, within the next forty days after any such Regulations are laid before it, resolves that the Regulations shall be annulled, the Regulations shall thenceforth be void, but without prejudice to anything previously done thereunder or to the making of new Regulations;

Provided that there shall not be included in the computation of the said forty days any period of eight or more consecutive days intervening between any two consecutive sittings of the Legislative Assembly.

6. (1) *(a)* Any person to whom a licence is granted under this Act may apply to the Governor for permission to examine any specified area of land with a view to its possible acquisition on behalf and for the use of such applicant and if in the opinion of the Governor the examination of such land with a view to its possible acquisition is necessary to enable the applicant to exploit the licence or to exploit it fully, the Governor may declare it desirable that the land should be examined. When a declaration is so made the Treasurer may grant, under subsection (1) of section 7 of the Land Acquisition (Public Purposes) Ordinance (Chapter 136) or any other law amending or substituted for that subsection, such authorisation as may reasonably be required by the applicant.

(b) If, as a result of any such examination as is mentioned in the foregoing paragraph, it shall appear to him desirable that such land should be acquired on behalf or for the use of the applicant, the Governor may declare that the land is required for a public purpose within the meaning of the Land Acquisition (Public Purposes) Ordinance (Chapter 136) or any law amending or substituted for that Ordinance, and when a declaration is so made the Treasurer may in due course proceed to acquire the land under the provisions of that Ordinance or of any other law as aforesaid.

(2) Before authorisation of examination is granted and before land is acquired on behalf or for the use of any person under the provisions of this section, the Treasurer shall require such person to enter into an agreement with him providing to the satisfaction of the Treasurer for the following matters, namely:

(a) the payment to the Treasurer of the cost of the acquisition including all incidental expenses and the deposit with the Treasurer of any sum fixed by the Treasurer on account of the payment so to be made;

(b) the transfer, on such payment, of the land to such person;

(c) the terms on which the land shall be held by such persons;

(d) when the acquisition is required for the construction of any work or works, the time within which and the conditions subject to which the work or works shall be initiated, executed and maintained, and the terms (if any) on which the public shall be entitled to use or to acquire the work or works; and

(e) in any case where anything has been done or may be done under the provisions of subsection (1) of section 7 of the Land Acquisition (Public Purposes) Ordinance (Chapter 136) or under any provision of law amending or substituted for that subsection, by or on behalf of the Treasurer, the payment to the Treasurer of all damages, to be assessed in accordance with the provisions of subsection (2) of that section.

(3) Words and phrases used in this section shall, unless the context otherwise requires, have the same meaning as in the Land Acquisition (Public Purposes) Ordinance (Chapter 136) or in any law amending or substituted for that Ordinance.

7. The Petroleum (Production) Ordinance, 1947, and all regulations made thereunder are hereby repealed.

(b) MALTESE PETROLEUM (PRODUCTION) (AMENDMENT) ACT, 1965

ACT No. XV OF 1965

An Act further to amend the Petroleum (Production) Act, 1958.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the House of Representatives of Malta, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Petroleum (Production) (Amendment) Act, 1965, and shall be read and construed as one with the Petroleum (Production) Act, 1958, hereinafter referred to as "the principal Act".

2. Section 2 of the principal Act shall be amended as follows:

(a) immediately after the words "In this Act" there shall be added the words "unless the context otherwise requires" and the following definition:

"'the continental shelf' means that part of the seabed and subsoil of the submarine areas adjacent to the coast of Malta but outside territorial waters over which Malta is entitled by international law to exercise sovereign rights for the purpose of exploring it and exploiting its natural resources;"

(b) for the definition of "Malta" there shall be substituted the following:

"'Malta' means the Island of Malta, the Island of Gozo, the other islands of the Maltese Archipelago, the land underlying territorial waters and the continental shelf;".

3. In subsection (2) of section 3 of the principal Act, immediately after the words "or gets petroleum", there shall be added the words "on, under or from any lands in Malta".

4. In subsection (1) of section 4 of the principal Act, immediately after the words "and get petroleum", there shall be added the words "on, under or from any lands in Malta".

5. In subsection (1) of section 5 of the principal Act, immediately after the words "and mining for petroleum", there shall be added the words "in Malta".

6. Any regulations made under section 5 of the principal Act shall be deemed to have been made under the principal Act as amended by this Act.

Annex 15

MALTESE CONTINENTAL SHELF ACT, 1966

ACT No. XXXV OF 1966

[See Memorial of Malta, Annex 1, infra*]*

Annex 16

MALTESE PETROLEUM (PRODUCTION) REGULATIONS, 1969

DATE OF COMMENCEMENT: 23 SEPTEMBER 1969

In exercise of the powers conferred by section 5 of the Petroleum (Production) Act, 1958, and by that section as applied by subsection (2) of section 3 of the Continental Shelf Act, 1966, the Prime Minister has made the following regulations:

1. These regulations may be cited as the Petroleum (Production) Regulations, 1969.

2. In these regulations, unless the context otherwise requires:

"the Act of 1958" means the Petroleum (Production) Act, 1958;
"the Act of 1966" means the Continental Shelf Act, 1966;
"company" means a limited liability company constituted in accordance with the law of Malta or a similar body corporate established or incorporated outside Malta;
"continental shelf" has the same meaning as is assigned to it in section 2 of the Continental Shelf Act, 1966;
"licence" means a licence pursuant to the Act of 1958 or pursuant to that Act and to that Act as applied by the Act of 1966;
"licensee" means the company to whom the licence is granted, its representative appointed under the licensee and any company to whom the rights conferred by the licence may lawfully have been assigned;
"Malta" has the same meaning as is assigned to it in section 126 of the Constitution of Malta;
"Minister" has the same meaning as is assigned to it by section 2 of the Act of 1958;
"person" includes a body or association of persons, whether incorporated or otherwise.

3. (1) Any company may apply in accordance with these regulations for—

(a) a production licence; or
(b) an exploration licence.

(2) A production licence may also provide for the rights to search for petroleum.

4. (1) An application for either type of licence shall be made in writing in the form set out in the First Schedule hereto or in a form substantially to the like effect addressed to the Minister and shall be accompanied by the appropriate fee and by such information and by such evidence in support thereof as is referred to in that Shedule and is appropriate to that application.

(2) If any of the matters stated in an application shall change after the application is made but before a licence is granted or the Minister informs the applicant that the application is refused, the applicant shall forthwith give notice in writing to the Minister giving particulars of the change.

(3) All information comprised in or furnished to the Minister in pursuance of an application for a licence shall be treated as confidential.

(4) Every application for a production licence pursuant to these regulations shall be—

(a) in respect of one or more blocks described or specified by a notice published in accordance with the next following paragraph;

(b) lodged not earlier than or later than the dates specified by such a notice as the dates after and before which respectively the Minister is prepared to receive applications in respect of the blocks so specified;

and shall not compromise any part of a block.

(5) The notice referred to in the last foregoing paragraph is a notice published from time to time by the Minister in the Government Gazette describing or specifying by reference to a map deposited at the office of the Minister and at such other places (if any) as may be specified in the notice, areas (in these regulations referred to as "blocks") to which reference numbers shall be assigned, in respect of which he is prepared to receive applications for production licences and specifying the dates within which applications in respect of the blocks so specified are to be made.

(6) An application for an exploration licence may be made in respect of the whole or any part of Malta and the continental shelf, but so that the rights conferred by any exploration licence which is granted shall not be exercisable in any area in respect of which a licence granted by the Minister is for the time being in force, entitling the grantee thereof to search and bore for and get petroleum, except with the agreement of the holder of that licence to the exercise in that area of any rights granted by that exploration licence.

(7) Nothing in this regulation shall prevent more than one application being made by the same company or more than one licence being granted to it.

5. (1) Unless the licence otherwise provides, the licensee shall not without the consent of the Minister in writing, given on an application to that effect by the licensee, assign or part with any of the rights granted by the licence in relation to the whole or any part of the area in which those rights are exercisable or grant any sublicence in respect of any such rights.

(2) An application for a consent under this regulation shall be made in writing addressed to the Minister and shall be accompanied by the appropriate fee and by such particulars, information and evidence in respect of the proposed assignee as is required to be furnished in the case of an application for a licence under regulation 4.

6. (1) With every application for a production licence there shall be paid a fee of three hundred pounds.

(2) With every application for an exploration licence there shall be paid a fee of one hundred pounds.

(3) With every application for a consent under regulation 5 there shall be paid a fee of thirty pounds.

7. The Minister shall as soon as may be after the grant, surrender, determination or assignment of a licence made pursuant to the Act of 1958 or pursuant to that Act and to that Act as applied by the Act of 1966 or to these regulations or to any licence granted thereunder, publish notice of the fact in the Government Gazette giving particulars thereof.

8. Every production licence and every exploration licence shall incorporate the model clauses respectively set out in the Second Schedule and in the Third Schedule hereto unless the Minister thinks fit to modify or exclude them in any particular case.

9. The Petroleum Regulations, 1958, are hereby revoked without prejudice to anything lawfully done or omitted to be done thereunder.

Annex 17

MALTESE TERRITORIAL WATERS AND CONTIGUOUS ZONE ACT, 1971

ACT No. XXXII OF 1971

An act to extend the territorial waters of Malta and to make provision for a contiguous zone.

Be it enacted by Her Majesty the Queen, by and with the advice and consent of the House of Representatives of Malta, in this present Parliament assembled, and by the authority of the same as follows:

1. This Act may be cited as the Territorial Waters and Contiguous Zone Act, 1971.

2. In this Act, unless the context otherwise requires—

"law" includes any instrument having the force of law;
"Malta" means the Island of Malta, the Island of Gozo and the other islands of the Maltese Archipelago.

3. (1) Save as hereinafter provided, the territorial waters of Malta shall be all parts of the open sea within six nautical miles of the coast of Malta measured from low-water mark on the method of straight baselines joining appropriate points.

(2) For the purposes of the Fish Industry Act, 1953, and of any other law relating to fishing, whether made before or after this Act, the territorial waters of Malta shall extend to all other parts of the open sea within twelve nautical miles from the baselines from which the breadth of the territorial waters is measured, and, for the purposes aforesaid jurisdiction shall extend accordingly.

4. (1) Without prejudice to the provisions of subsection (2) of section 3 of this Act, in the zone of the open sea contiguous to the territorial waters of Malta as defined in subsection (1) of section 3 of this Act (such zone being in this Act referred to as "the contiguous zone") the State shall have such jurisdictions and powers as are recognised in respect of such zone by international law and in particular may exercise therein the control necessary—

(a) to prevent any contravention of any law relating to customs, fiscal matters, immigration and sanitation, including pollution, and

(b) to punish offences against any such law committed within Malta or in the territorial waters of Malta as defined by subsection (1) or subsection (2) of section 3 of this Act, as the case may require.

(2) The contiguous zone shall extend to twelve nautical miles from the baselines from which the breadth of the territorial waters is measured.

5. Nothing in this Act shall be construed as affecting any jurisdiction and power exercisable in accordance with international law outside territorial waters.

Annex 18

(a) MALTESE TERRITORIAL WATERS AND CONTIGUOUS ZONE (AMENDMENT) ACT, 1975; *(b)* MALTESE LETTER DATED 10 NOVEMBER 1975

(a) MALTESE TERRITORIAL WATERS AND CONTIGUOUS ZONE (AMENDMENT) ACT, 1975

ACT No. XLVI OF 1975

An act to amend the Territorial Waters and Contiguous Zone Act, 1971.

Be it enacted by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Territorial Waters and Contiguous Zone (Amendment) Act, 1975, and shall be read and construed as one with the Territorial Waters and Contiguous Zone Act, 1971, hereinafter referred to as "the principal Act".

2. For the words "twelve nautical miles" wherever they occur in subsection (2) of section 3 and in subsection (2) of section 4 of the principal Act there shall be substituted in each case the words "twenty nautical miles".

(b) MALTESE LETTER DATED 10 NOVEMBER 1975

On instructions from my Government, I have the honour to transmit to you herewith the text of Act No. XLVI of 1975, entitled "The Territorial Waters and Contiguous Zone (Amendment) Act 1975, concerning the extension of Malta's territorial waters to 20 nautical miles.

I should be grateful if arrangements could be made for the distribution of a copy of the Act to all States Members and Observers of the United Nations.

(Signed) V. J. GAUCI,
Acting Permanent Representative.

His Excellency
Mr. Kurt Waldheim
Secretary-General of the United Nations
United Nations Headquarters
New York N.Y.

Annex 19

(a) MALTESE TERRITORIAL WATERS AND CONTIGUOUS ZONE (AMENDMENT) ACT, 1978; *(b)* MALTESE LETTER DATED 1 SEPTEMBER 1978

(a) MALTESE TERRITORIAL WATERS AND CONTIGUOUS ZONE (AMENDMENT) ACT, 1978

ACT No. XXIV OF 1978

An act further to amend the Territorial Waters and Contiguous Zone Act, 1971.

Be it enacted by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Territorial Waters and Contiguous Zone (Amendment) Act, 1978, and shall be read and construed as one with the Territorial Waters and Contiguous Zone Act, 1971, hereinafter referred to as "the principal Act".

2. Section 3 of the principal Act shall be amended as follows:

(a) in subsection (1) thereof for the words "six nautical miles" there shall be substituted the words "twelve nautical miles"; and

(b) in subsection (2) thereof for the words "twenty nautical miles" there shall be substituted the words "twenty-five nautical miles".

3. In subsection (2) of section 4 of the principal Act for the words "twenty nautical miles" there shall be substituted the words "twenty-four nautical miles".

(b) MALTESE LETTER DATED 1 SEPTEMBER 1978

I enclose for your attention copy of the legislation (Act No. XXIV of 1978) recently enacted by the Government of Malta, further amending the Territorial Waters and Contiguous Zone Act of 1971 (Act No. XXXII of 1971).

This amendment, which has to be read and construed as one with the Principal Act, has for its effect:

(i) The extension of Malta's territorial waters to 12 nautical miles measured from low-water mark on the method of straight baselines joining appropriate points.

(ii) The extension of the contiguous zone to 24 nautical miles from the baselines from which the breadth of the territorial waters is measured.

(iii) The extension of the exclusive fishing zone to 25 nautical miles from the same baselines.

I should be grateful if you could arrange for this letter, and the enclosed copy of the Official Act, to be brought to the attention of States Members and Observers of the United Nations.

(Signed) V. J. GAUCI,
Acting Permanent Representative.

His Excellency, Dr. Kurt Waldheim
Secretary-General of the United Nations
United Nations Headquarters
New York, N.Y. 10017.

Annex 20

MALTESE TERRITORIAL WATERS AND CONTIGUOUS ZONE (AMENDMENT) ACT, 1981

ACT No. XXVIII OF 1981

An act to amend the Territorial Waters and Contiguous Zone Act, 1971.

Be it enacted by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Territorial Waters and Contiguous Zone (Amendment) Act, 1981, and shall be read and construed as one with the Territorial Waters and Contiguous Zone Act, 1971, hereinafter referred to as "the principal Act".

2. Section 5 of the principal Act shall be re-numbered as section 6.

3. Immediately after section 4 of the principal Act there shall be added the following new section:

> *"Powers to Regulate the Passage of Ships through Territorial Waters*
>
> 5. (1) The Prime Minister may make regulations to control and regulate the passage of ships through the territorial waters of Malta, and, without prejudice to the generality of the foregoing, may by such regulations make provision with respect to all or any one or more of the following matters:
>
> *(a)* the safety of navigation and the regulation of marine traffic, including the designation or establishment of sea lanes and traffic separation schemes to be used or observed for the passage of ships;
> *(b)* the protection of navigational aids and facilities and other facilities or installations;
> *(c)* the protection of cables and pipelines;
> *(d)* the conservation of the living resources of the sea;
> *(e)* the prevention of infringement of any law or regulation relating to fisheries;
> *(f)* the preservation of the environment and the prevention, reduction and control of pollution thereof;
> *(g)* marine scientific research and hydrographic surveys;
> *(h)* the prevention of infringement of any customs, fiscal, immigration or sanitary laws or regulations;
> *(i)* the arrest, detention and seizure of ships to ensure compliance with any law, rule, regulation or order and such other power as may be necessary for securing such compliance;
> *(j)* the punishments, whether by way of fine *(multa* or *ammenda)* or of imprisonment, to be applied in respect of any contravention or non-observance of any regulation made under this section.
>
> (2) In the application of any regulation made under subsection (1) of this

section to warships or to nuclear powered ships or to ships carrying nuclear or other inherently dangerous or noxious substances, their passage through territorial waters may, by any such regulation, be made subject to the prior consent of, or prior notification to, such authority as may be specified therein."

Annex 21

ITALIAN DECLARATION OF 29 SEPTEMBER 1911

VIII.

DICHIARAZIONI DI BLOCCO

Blocco della Tripolitania e della Cirenaica

(29 settembre 1911)

Le ministre des affaires étrangères d'Italie a l'honneur de signifier à ... la déclaration suivante:

Le Gouvernement de Sa Majesté le Roi d'Italie, vu l'état de guerre existant entre l'Italie et la Turquie, agissant en conformité des principes du droit des gens et particulièrement des règles formulées par la déclaration de Paris du 16 avril 1856 et par la déclaration de Londres du 26 février 1909;

déclare qu'à partir du 29 septembre courant le littoral de la Tripolitaine et de la Cyrénaïque, s'étendant de la frontière tunisienne jusqu'à la frontière de l'Egypte, avec ses ports, havres, rades, criques, etc., compris entre les degrés 11.32 et 27.54 de longitude orientale de Greenwich, sera tenu en état de blocus effectif par les forces navales du Royaume. Les bâtiments amis ou neutres auront un délai qui sera fixé par l'amiral commandant en chef les forces navales de Sa Majesté le Roi d'Italie, à partir de la date du commencement du blocus, pour sortir librement des endroits bloqués.

Il sera procédé contre tout bâtiment qui tenterait de violer ledit blocus, conformément aux règles du droit international et aux traités en vigueur avec les Puissances neutres.

Le ministre des affaires étrangères d'Italie saura gré à ... de vouloir bien porter aussitôt que possible la déclaration susdite à la connaissance de son gouvernement.

(19 ottobre 1911)

Faisant suite à sa note verbale du 29 septembre dernier, au sujet du blocus du littoral de la Tripolitaine et de la Cyrénaïque, le ministère royal des affaires étrangères a l'honneur de signifier à ... que la limite orientale de la côte tenue en état de blocus effectif par les forces navales du Royaume a été modifiée et fixée à la longitude de 5° 11′ est Greenwich.

Le ministère royal des affaire étrangères saura gré...

Annex 22

ITALIAN ROYAL DECREE OF 4 FEBRUARY 1913, No. 85

[Italian text not reproduced]

(Translation)

ROYAL DECREE No. 85 OF FEBRUARY 4, 1913, PROVIDING ORDERS FOR CUSTOMS SURVEILLANCE ALONG THE COAST OF LIBYA

Official Gazette, Feb. 19, 1913, No. [illegible]

Victor Emanuel III
by the Grace of God and the Will of the Nation King of Italy

In view of Royal Decree No. 1217 of November 5, 1911, which has become Law No. 83 of February 25, 1912;

In view of Law No. 719 of July 6, 1912 and Royal Decree No. 1205 of November 20, 1912;

In view of the unique text of the Customs Laws approved by Royal Decree No. 20 of January 26, 1896;

Upon the proposal of Our Minister and Secretary of State for the Colonies;

Upon the advice of the Ministers;

We have decreed and do decree:

Article 1

Customs activities in the importation and exportation of goods in Tripolitania and Cyrenaica may be conducted only within the ports of landing-places of Buchamez, Zuara, Tripoli, Homs, Sliten, Misurata (Buscheifa), Marsa Zafran (Syrte), Benghazi, Darna, and Tobruk.

The Governors of Tripolitania and Cyrenaica may at their discretion permit customs operations in other places on the coast in addition to or instead of the above or may prohibit them temporarily in some of them, upon informing the Minister for the Colonies in every case.

Article 2

For the purposes of customs surveillance, the sea within twelve miles (22.224 meters) from the shore along the coast of Tripolitania and Cyrenaica shall form part of the maritime customs zone, within the confines of which every vessel, whether Italian of foreign, may be subject to inspection by the authorities in charge of said surveillance.

We do ordain that the present decree, furnished with the Seal of State, be inserted in the official body of laws and decrees of the Kingdom of Italy and do order all whom it behooves to observe it and cause it to be observed.

Annex 23

Italian Royal Decree of 27 March 1913, No. 312

[Italian text not reproduced]

(Translation)

No. 312

ROYAL DECREE OF MARCH 27, 1913, APPROVING THE REGULATION OF MARITIME FISHING OPERATIONS IN LIBYA

(Published in *Official Gazette* No. 105 of May 6, 1913)

Victor Emmanuel III
by the Grace of God and by the Will of the Nation
King of Italy

Having seen Royal Decree No. 1247 of November 5, 1911, which was changed into law No. 83 of February 25, 1912;

Having also seen law No. 749 of July 6, 1912, and Royal Decree No. 1205 of November 20, 1912;

Having heard the Council of Ministers;

on the proposal by Our minister, the Secretary of State for the colonies;

We have decreed and by these means decree that:

The single regulation relating to maritime fishing operations for Tripolitania and Cyrenaica, endorsed, on Our order, by the proposing minister, is hereby approved.

We order that this decree, with the State seal affixed thereto, become part of the official collection of laws and decrees of the Kingdom of Italy, with copies being sent to all those who must comply with it and insure compliance of same.

Issued in Rome on March 27, 1913.

LAWS AND DECREES, No. 312, 1913

Regulation relating to maritime fishing operations in Tripolitania and in Cyrenaica

TITLE I

General Provisions

Article 1

Maritime fishing operations in Tripolitania and Cyrenaica are governed by this regulation and by the rules that, to insure compliance with same, might be issued by the minister for the colonies or by the governors by him delegated.

TITLE II

Organization of Fishing Operations

Article 2

The operation of maritime fishing is entrusted to the authorities charged with maritime fishing operations in Tripolitania and Cyrenaica.

Article 3

The Royal Navy, all Customs Officials and all other Police Officials will share, with the authorities indicated in Article 2, the responsibility for implementing the rules contained in this regulation and to ascertain any infractions thereto.

Temporary officers with the title of fishing-guards may be hired to supervise maritime fishing.

Rules relating to such hiring will be determined by the minister for the colonies.

Article 4

All authorities entrusted with the implementation of this regulation, all Royal Navy personnel and generally all officers charged with the supervision of maritime fishing have the authority to inspect the ships or fishing boats as well as the public warehouses and the places where the fish or other fishing products are sold to insure that the provisions of this decree have not been violated.

Article 5

The authorities charged with the administration of fishing operations in Tripolitania and Cyrenaica will, through its governors, annually send a report to the Ministry of Colonies on the fishing operations in the waters under its jurisdiction, showing the results attained and making proposals that they might deem appropriate in the interest of the (fishing) industry.

Article 6

The payment of duties, set forth for fishing operations by this regulation, will be made in accordance with the provisions contained in Articles 100 to 105, 107 and 108 of the regulation approved with Royal decree No. 584 of December 27, 1896, for the implementation of the law on measures in favour of the merchant marine navy.

Documents showing that the payment of duties has been made, must be shown to the authorities and to all officers assigned to fishing operations.

TITLE III

Regulations for Fishing Boats and Ships

Article 7

All fishing boats and ships owned by Italians residing in Tripolitania and Cyrenaica and owned by natives must be registered with the maritime port authorities.

Article 8

No one can operate a fishing boat or ship in the waters of Tripolitania and Cyrenaica without having obtained the title of seaman authorized to fish.

Seaman authorized to operate fishing boats and ships fall under two categories: those for coastal fishing, that is to say operating within one mile of the coast, and those for fishing on the high seas.

In order to obtain the title of seaman authorized to fish, one must:

(*a*) be deemed qualified by the maritime authorities;

(*b*) have twelve months of training on coastal fishing operations or on high sea fishing operations, as the cases require;

(*c*) prove that he has been a resident of Tripolitania or Cyrenaica for five years.

Italian citizens are exempted from the requirement indicated in letter (*c*), and for them, the permits obtained in Italy for this purpose, are valid in Tripolitania and Cyrenaica.

All certificates proving that a seaman is authorized to fish are issued by the local maritime authorities.

Article 9

All fishing boats or ships of any carrying capacity must always display, and visible from a distance, in the centre of the master sail, its registration number and under it the badge of the maritime district. The number will be painted with indelible black ink and the figures be at least 50 centimetres high.

The badge will consist of the initial capital letter of the chief town of the district, at least 50 cm high, inscribed in a circle with a diameter of at least one metre with a sideband at least 7 cm wide. The above badge will be painted red. During the night all fishing boats and ships must have the lights prescribed by law.

Article 10

All persons operating ships or boats used for the fishing of sponges or of corals and all those fishing tuna or those that have obtained a concession to fish in salt lakes, must keep a "fishing log" which will indicate, for each fishing day, the hours of operation and the fishing locations, the quantities and qualities, depending on the various categories of fished products.

The sanitary condition of the crew must also be shown for all sponge fishing.

All persons assigned to operate fishing boats or ships, their owners or managing owner as well as all other fishing operators must furnish to the maritime authorities all information that might be requested on fishing.

Article 11

Fishing boats or ships are prohibited from having on board:

(*a*) any firing weapons, except those for which a permit has been obtained;

(*b*) any items indicated in Article 14.

TITLE IV

Distances and General Fishing Bans

Article 12

All fishermen must keep at a suitable distance from each other in accordance with local practice, the type of fishing carried out, the mode of operation and the type of equipment used.

Maritime authorities may even prescribe said distances, limit the number of permits and set up shifts among the fishermen for fishing operations, should there be locations that are especially sought and occupied as a preference due to their greater abundance of fish or other aquatic animals or due to other special conditions.

Article 13

Fishing is prohibited:

(a) in areas of the sea or in salt lakes which are directly being used by the State or of concessions or of exclusive duly recognized fishing rights;

(b) in areas set aside for the operation of fishing-nets for tunny or of other permanent fishing;

(c) inside ports, except by special permission of the maritime authorities;

(d) in water areas, which in order to protect aquatic products, come under special bans set forth by this decree or by rules issued by the minister for the colonies or by the governors;

(e) in areas indicated by the maritime authorities for military reasons, and in those areas where there are underwater telegraphic cables.

Article 14

It is prohibited to fish with dynamite or with other explosives, and it is also prohibited to throw in the water any materials that might weaken, stun and kill the fish and the other aquatic animals.

The collection and sale of animals that have thus been stunned or killed is also prohibited.

TITLE V

Fishing of Fish, of Mollusk and of Crustaceans

Article 15

All Italian citizens, all natives and those who have been residing in Tripolitania and Cyrenaica for at least five years may fish during any part of the year for fish, mollusk or crustaceans in an area of three maritime miles from the shore, providing they abide by the rules set forth in this decree.

Article 16

Fishing operations in accordance with the preceding article are subordinated to the granting of a permit by the maritime authorities.

The following duties must be paid in order to secure a permit:

2 Lire for each hull with a net tonnage of not over one ton;
5 Lire for each hull with a net tonnage of more than one ton;
8 Lire for each hull equipped for fishing with long-lines and rectangular nets;
5 Lire for each fishing device, set up ashore such as (scales, variable-length measuring units, etc.).

The fishing permit is valid for the year in which it was issued.

Article 17

For fishing operations with trawls, even over the entire expanse of the sponge algas, the following provisions will be complied with:

First, that said nets be kept at a distance of not less than one kilometre from boats that are carrying out sponge fishing operations, and that they abide by the rules relating to fishing-nets for tunny and to coral banks;

Second, that the sackcloth mesh of the nets not be less than twenty millimetres on its side;

Third, that the ships or boats remain at a distance of 500 metres from the areas where land-drawn trawl fishing nets are operating, and from areas where possible area fishing limitations in general might exist, including that of sponge fishing.

Fourth, that beyond the limit set forth by Article 15, a special permit with particular regard for the persons specified in it, be issued by the maritime authorities of Tripoli, Benghazi and Derna.

Even the land-drawn trawl nets must have a sackcloth mesh of not less than twenty millimetres on its side; they must further remain 300 metres away from each other, except for special provisions of the maritime authorities.

A period of two years from the date of publication of the decree that approves this regulation is granted within which to comply with the provisions relating to the meshes of the nets.

Article 18

For fishing with trawl nets, with respect to Articles 15 and 17 (?), the maritime authorities will issue a permit subject to the payment of the following duties:

—for each hull, even if relating to sailboats with mechanical motors, 15 lire;

—for each steamer with an engine not exceeding 30 indicated horse powers, 20 lire;

—for each motor hull or steamer with an engine exceeding 30 indicated horse powers, 30 lire.

The permit is valid for the year in which it is issued.

TITLE VI

Special Fishing Operations

CHAPTER I

Sponge Fishing

Article 19

Sponge fishing operations over the entire expanse of the sponge algas of Tripolitania and Cyrenaica by persons indicated in Article 15 are subject to a "permit" issued by the maritime authorities of Tripoli, Benghazi and Derna especially appointed for this purpose by the minister for colonies.

The validity of said permit cannot be of more than one year, and is subordinated to the payments of duties set forth by the following articles.

The holder of such a permit may freely fish during any period of the year; the total number of ships or of boats of each class, of the hulls and of the other sponge fishing instruments will be specified by the minister for the colonies. The minister for the colonies may, from time to time, decide the number of boats, of hulls and of the fishing instruments that may be used by each individual company.

Article 20

The minister for colonies, in agreement with the minister for foreign affairs, may authorize the granting of permits to ships or boats of foreign flags for sponge fishing operations in the waters of Tripolitania and Cyrenaica, under the same conditions referred to in the preceding article.

Such authorization is by preference granted to the captains of those ships or boats that have Italian and native seamen among their crews, that belong to persons residing in Tripolitania or Cyrenaica, and that are rigged and equipped there.

Article 21

The minister for the colonies may suspend the fishing of sponges in certain areas, to protect said product, by the issuance of a decree that will indicate the duration of the suspension.

Article 22

A sponge fishing permit is subject to the payment of the following duties:

first, for each ship or boat equipped for fishing with a harpoon (trident, kamakis), 50 lire;
second, for each ship or boat, equipped with divers, 100 lire;
third, for each ship or boat, equipped for trawl fishing and with a tonnage exceeding 5 net tons, 150 lire;
fourth, for each "apparatus" to which no more than 5 divers are assigned, 700 lire;
fifth, for each diver over five on each "apparatus", 100 lire.

Article 23

The application to obtain a sponge fishing permit must be submitted to the maritime authority, that has been so delegated in Article 19, and must indicate:

first, the name, last name and profession of the owner and of the managing owner of the ship or boat;
second, the number, the name, the nationality and origin of the ship or boat;
third, the fishing methods that one wishes to use;
fourth, a list of the names and general information of the persons that will make up the crew and with special information regarding their respective jobs;
fifth, the number and the quality of the fishing instruments and tools;
sixth, the terms of the enlistment agreement.

All applications relating to fishing with diving apparatus may be submitted even if they do not show all the required information; this information must, however, be submitted within a suitable period of time to be determined from time to time and in any case prior to the issuance of the "permit" to the respective ships or boats.

No ships, boats or equipment different from those reported may be used during fishing, and all changes in the make-up of the crew must be reported to the nearest maritime authorities, which must report this information to the authority that granted the permit.

All applications submitted by foreigners must have the "approval" of their consul.

A sponge fishing permit is valid from March 1 to the subsequent February inclusive, regardless of the month in which it is issued.

Article 24

Sponge fishing operations may be carried out only with the following methods:

with diving equipment (diver);
by diving (performed by "skin divers");
by trawl (gangave);
with a harpoon (trident, "kamakis").

The minister for the colonies or the maritime authority especially delegated for this purpose may authorize other fishing methods, including the use of motors attached to the various fishing boats and to their capstans.

Article 25

Fishing with a diver's suit and with a trawl is prohibited along the coastline of Tripolitania and Cyrenaica, in the area included between the shore and the twenty-metre depth line.

Article 26

Fishermen carrying out fishing operations with diver's suits, by diving and with harpoons cannot fish, transport and sell sponges which, when immersed in water, do not have a maximum diameter of:

8 cm for equine sponges;
4 cm for fine (soft) sponges;
4 cm for zymoches sponges.

Fishermen who use the trawl method will not incur the penalties set forth by Article 56 for the fishing of sponges that are smaller than the minimum dimension. These sponges must however be turned over to the maritime authorities and sold for the benefit of the public treasury.

Article 27

Concessions for exclusive use may be granted for particular sea areas to individuals, to companies or associations, who intend to devote themselves to the culture of sponges, and who are deemed qualified by the maritime authorities and who submit guarantees to carry out the experiment. The concession is granted by decree of the minister for the colonies.

Article 28

Special provisions will regulate the work, the weekly compulsory rest for divers and for the other persons assigned to the fishing of sponges, and accident prevention rules will be set up for the use of fishing equipment. The recognized competence of divers, acquired in accordance with national law, will be considered valid.

All divers must prove that they have had at least two years of training in said fishing before being accepted to carry out sponge fishing operations in the waters of Tripolitania and Cyrenaica.

Article 29

The yield from the fishing of sponges must be taken into the ports of Tripoli, Benghazi and Derna for the registration set forth by the following article and for any commercial transaction. Anyone who violates such rule, by selling or attempting to sell the fishing yield in other ports or at sea, is punished under the rules of Article 56, paragraph, and incurs the revocation of the permit.

Article 30

All sponges that have been fished must be submitted for registration to the maritime authorities of the ports indicated in the preceding article.

Qualities that must be registered are:

first, equine sponges;
second, zymoches sponges;
third, fine (soft) sponges;
fourth, elephant ear sponges.

All fished sponges, except for those which are provided in Article 53, cannot be transported from one ship or boat to another; they may only be loaded aboard the fishing boat which is designated for the exclusive storage of the fishing yield of each ship or boat or group of ships or boats, that belong to the same company.

Fishermen can leave the waters of Tripolitania and Cyrenaica only after having reported their fish yield and having completed its registration.

Article 31

"Black" sponges that are collected on the beach will be registered with the nearest port authorities, and then sold at any public market in accordance with local practice.

A tax of 25 lire per quintal will be collected on said sponges.

The respective registrations will be reported annually to the head of the respective maritime district.

Article 32

All sponges exported from Tripolitania and Cyrenaica are subject to an export customs duty of 10 lire/quintal, for raw sponges and of 20 lire for those that are washed or finished.

CHAPTER II

Fishing-Nets for Tunny

Article 33

To carry out fishing-nets for tunny operations in waters of Tripolitania and Cyrenaica, which are reserved for persons indicated in Article 15, authorization from the minister for the colonies is required. The authorization must ensue from a decree accompanied by the contract of the individual who intends to set up the fishing-nets for tunny operation; the decree itself will specify the period of validity of the concession, which cannot be of a duration of more than 30 years, the water area, the corresponding space ashore if available, reserved for the fishing-net for tunny operation and for the preparation of the fishing yield, including any other condition for the setting up of the fishing-net for tunny operation.

For concessions relating to fishing-net for tunny operations of a duration of more than six years and in cases relating to installations of special industrial importance, the concession, rather than being granted pursuant to a certificate of submission to authority, will be accorded on the basis of contracts that will be stipulated in the manner and forms established by the Code and by the regulation for the merchant marine navy.

As a guaranty for his contractual obligations, the licensee must put up a suitable bond, the amount of which shall be decided in each case by the maritime authorities.

Article 34

Should two or more persons or agencies request the granting of a concession to set up a fishing-net for tunny operation in the same space of water, the minister for the colonies has the authority to grant the concession to the applicant that he deems preferentially more worthy by the nature of his financial and technical guarantees, unless the minister deems it advisable to proceed to assign the concession on the basis of public auction among the competitors or of private bidding, proclaimed by them based on an increase of the minimum rate set forth by the subsequent article.

If all of them meet the same conditions, in the case foreseen by the first part of this article, a preference may be given to the fishermen's co-operative associations, to the consortiums or to the syndicates of these same co-operative groups, which have been legally set up, providing that the concession is used and operated for the benefit of the co-operative groups. For all the cases envisaged by this article no appeal can be lodged against the decision of the minister for the colonies.

Article 35

Each concession requires the payment of an annual fee.

The annual fee is established at a rate of one lire per each quintal of tuna or of any other mackerel fished, up to 8,000 quintals and of five (5) lire per quintal for any quantity over (T.N. not legible).

After at least five years of operation the minister for the colonies may replace the proportional fee with a set fee, which, for the concessions granted as a result of a public auction or of a private bidding will be equal to the annual average of the previously paid fees and for the concessions granted subsequent to a private negotiation, based on the first paragraph of this article it cannot exceed by 50 per cent said average.

The fee thus set may be subject to a revision every five years on request by the Administration or by the grantee.

If an agreement cannot be reached, a decision on the application will be made by a commission of arbitrators, consisting of three members one of which shall be appointed by the Administration, the other by the grantee, and the third shall be appointed by the two arbitrators that have already been appointed. Should the two arbitrators not agree on the selection of the third, the latter shall be appointed by the president of the Court of Appeals of Tripoli.

Article 36

The certificate granting the concession shall also contain the agreed minimum salary and the minimum profit sharing amount that the employees, utilized in the operation of the fishing-nets for tunny, can expect to share with the company. Any controversies relating to salaries and work agreements made between the company and the employees will be decided without appeal, by a commission of arbitrators, consisting of a representative of the grantee, a workers' representative and of the captain or other port official having jurisdiction, who will act as president.

Article 37

The grantee has the right to shirk his contractual obligations, if he can prove that within two fishing campaigns subsequent to the one in which the installation took place, the company operated by him has not given satisfactory results due to the insufficiency of the product.

The concession may be revoked with a justified decree by the minister for the colonies without any right to compensation, should such a measure become necessary due to reasons of public interest. The concession shall be revoked in the event that the grantee has allowed two consecutive years to elapse without setting up the installation starting from the date on which he should have begun or by failing to operate the fishing-net for tunny installation, except for the provisions set forth in the following article.

Article 38

The grantee is given two years from the date of the concession decree within which to begin the installation. During said period of time the grantee is obligated to conduct experiments to ascertain the passage of tuna. Should the grantee fail to comply with said provision his concession will be revoked.

Article 39

Each fishing-net for tunny operation is given, during the fishing period, an exclusive area, which, in relation to other adjacent fishing-net for tunny operations, will consist of an area of ten kilometres from the side of the mouth of the fishing-net for tunny operation and of one kilometre on the opposite side, starting from the centre of fishing-net for tunny installation.

With respect to all the other fishing operations, the exclusive area will be of five kilometres from the side of the mouth of the fishing-net for tunny operation and of one kilometre on the opposite side.

In the front of the fishing-net for tunny operation, the exclusive area, will be of six kilometres towards the high seas, over the entire length of the side exclusive area referred to in the preceding paragraph.

Any other type of fishing in the exclusive area referred to above or in any manner disturbing the passage of the tunny, is strictly prohibited.

The length of the tail cannot, in any event, exceed 1,000 metres.

CHAPTER III

Coral Fishing

Article 40

To search for coral banks a permit must be secured from the maritime authorities.

Anyone discovering a coral bank in the sea area of the sponge algas expanse must report said find to the above-mentioned authorities and may obtain a permit to exploit said find for two consecutive years.

Said authorization is subordinated to the payment of a fee, the amount of which will be one-tenth the value of the fished product, and on the conditions that shall be specified in the authorization itself.

CHAPTER IV

Fishing Rights in Salty Ponds or in Lagoons

Article 41

Salty ponds or lagoons in Tripolitania and Cyrenaica may be given in concession through a decree of the minister for the colonies and for a period of time not to exceed 15 years.

The concession certificate may also specify:

(a) an obligation to re-populate the ponds with new fish,

(b) rules relating to mytilus-culture and ostriculture in cases where such special cultivation is possible (*Translator's note: Mytilus and ostriculture are latin terms referring to the culture of mussel and mollusk clams or shells.)*

Until such time as a salt water pond or lagoon concession is given, no fishing operations can be conducted without a special permit from the maritime authorities, subject to the payment of a five lire duty-tax and to the rules that shall be specified by the maritime authorities.

CHAPTER V

Breeding of Aquatic Products

Article 42

The breeding of aquatic products at sea, or in salt water ponds or lagoons cannot be carried out without having obtained the corresponding concessions from the minister for the colonies.

All applications must be submitted to the maritime authorities together with the designs of the installations that are to be set up.

TITLE VII

Aid to the Industry and to Fishermen

Article 43

All co-operative organizations that may be set up between Italian and native fishermen in Tripolitania and Cyrenaica will be exempt, for a ten-year period, from any taxation relating to their certificates of incorporation and from any governmental taxation on the proceeds of the sale of their fished products or of the finished products, except for the duties provided by this regulation.

The same exemptions are given in Tripolitania and Cyrenaica to co-operatives among fishermen set up in Italy, to syndicates and to consortiums, concerning the income obtained there from the sale or preparation of the fish and of the other aquatic products.

Article 44

Fishing colonies that might be set up in Tripolitania and Cyrenaica between Italian and native fishermen may be granted free pieces of land for the construction of housing and of buildings that might be required for the operation of the supplementary fishing industries and also for gardens for domestic use.

Article 45

The minister for the colonies may grant, even gratuitously, to the fishermen the use of buildings and shacks, which might be located along the coast, and subsidize or promote the construction of housing for the fishermen.

Article 46

A decree issued by the minister for the colonies will specify the rules relating to the granting of good service awards to the fishing industry and to that for the preparation of the related products either with respect to the economic nature of the industry's results or to the novelty and perfecting of the methods and of the various industrial applications.

Article 47

As a guaranty for the loans granted to the owners and to the managing owners of the ships and boats used in the fishing operations in Tripolitania and Cyrenaica a special privilege may be set up on the products of the fishing itself, in favour of institutions, syndicates and consortiums of fishing co-operatives, co-operative companies and other commercial companies that might have been legally set up and which are expressly authorized by the minister for the colonies to conduct credit transactions for the fishing industry.

Article 48

To validate and implement said privilege it is necessary:

first, that it ensues from a written document;

second, that it have an effective date as a result of it having been recorded with the port authorities of Tripoli, Benghazi and Derna.

Said privileges are freely recorded in a special register which is kept at the port authority offices of the colony, from which the ship or boat departs for its fishing and where it is obligated to store the product.

The registrations are published in the fishing journal.

Certificates attesting to the existence or lack of registration are freely issued by the port authorities.

Article 49

The privilege set up in connection with the preceding provision prevails over any other that might be claimed on the fishing product, except for possible State rights.

Article 50

Said privilege cannot be extended for a duration greater than 12 months and may be renewed, prior to its expiration, for the subsequent campaign.

The renewal is made free of charge.

Article 51

It is valid, starting from the date of registration, and for the entire amount recorded, regardless of the date of supply of the capital, said privilege being valid in accordance with the terms of Articles 47 and 48, as a guaranty for accounts opened in favour of owners and of managing owners by the companies and by the subsidizing institutions.

Article 52

The interest on said loans cannot exceed the limit that shall be specified by a governor's decree on recommendation of the maritime authorities.

Article 53

The commercial loan institutions or companies may require that the fishing yield be kept aboard for safe-keeping, through one of their delegated representatives, or remove the yield itself and store it in places set aside for such purpose by the port authorities, unless the debtor requests that the product, in cases where it is not subject to deterioration, be stored in the public warehouses referred to in the following article.

Should the creditor remove the product, a special notation to this effect will be made in the fishing journal, duly signed both by the debtor and by the creditor.

Article 54

All offices of the port of Tripoli, of Benghazi and of Derna have public warehouses for non-perishable fishing products. The warehouses are run by the local maritime authorities.

The issuance of a certificate of storage and of a pledge note on the stored products is authorized.

A decree by the minister for the colonies will set forth the rules for storage, for the preparation of titles and duplicates should they be lost, for title transactions, for the withdrawal and actual sale of the products and for the duties that shall be owed to the warehouse.

Article 55

Subsequent provisions will provide for the expansion of assistance and aid to fishermen by institutions in Tripolitania and Cyrenaica.

TITLE VIII

Infractions, Penalties and Criminal Proceedings

Article 56

Any violation of Articles 6, last paragraph, 7 to 10, 12, 14, paragraph, 15, 34, are punished with a fine of from 50 to 1,000 lire.

Any violations of Articles 13, 14, first part, 17, 19, second and third paragraphs, 23, second paragraph, 24, 25, 26, 28 to 31, 39 as well as any infraction of the bans referred to in Articles 21 and 40, are punished with a fine of from 200 to 5,000 lire.

Article 57

Anyone conducting fishing operations of fish, of mullusk and of crustacean without the required permit in accordance with this regulation, is punished with a fine that will be not less than five times and not more than twenty times the duty specified for the permit itself.

Anyone carrying out sponge fishing operations without the required permit is punished with a fine equal to three times the duty specified for said permit.

Anyone who without any concession or declaration or authorization, in accordance with the provisions of this decree, fishes for coral, sets up fishing-nets for tunny, or carries out any aqua-culture operations, or fishes in salt lakes for which a concession is required, is punished with a fine of not less than 500 lire and of not more than 2,000 lire and by the confiscation of his nets and of the other tools including the fished yield.

Article 58

With respect to the infractions referred to in Article 11, concerning the possession of explosives or of firearms without permission, the person in charge of the ship or boat, is punished with a fine of up to 1,000 lire; the person in possession of said explosives or weapons is punished with imprisonment of up to six months.

The explosives and weapons will be confiscated.

Article 59

Violators may lose or have their fishing permit suspended. The devices or tools that were used or destined to commit the infraction are sequestered and stored with the maritime authorities, or in some other manner removed, until completion of the proceedings or transaction.

In case of a conviction, said authority may order their confiscation.

Aquatic products, that are fished in violation of this regulation, are always sequestered, and, if of a perishable nature, are sold immediately.

In case of a conviction the products or their price are confiscated.

Article 60

Those who have already been convicted previously for one of the infractions referred to in this regulation, and who commit another, cannot be given the minimum penalty.

Article 61

Officials of the ports of Tripolitania and Cyrenaica, each within the limits of their own jurisdiction, prepare cases, judge and settle all fishing violations referred to in this regulation, in accordance with the rules of procedure set forth for maritime crimes by the merchant maritime Code. Convictions for crimes referred to in Article 58 or for any fine exceeding 2,000 lire may be appealed before the Court of Appeals, within three days subsequent to the conviction.

Article 62

On infractions indicated in the first paragraph of Article 56 settlements are permitted, the purpose of which is to prevent a trial or to stop its course.

In addition to the assessed amounts violators are also required to pay court costs.

Article 63

The port authorities, in judging or providing to settle the case in accordance with the preceding article, may grant to the officers that have ascertained the violation part of the sum, not exceeding the half belonging to the State for monetary penalties, for the settlements and for the proceeds from the sale of the confiscated goods.

TITLE IX

Transitory Provision

Article 64

During the first three years of application of this regulation the minister for colonies may regulate the flow of fishermen in the fishing areas of Tripolitania and Cyrenaica by setting up shifts for fishing operations of fish, mollusk and crustaceans for groups of fishermen coming from other maritime districts and issuing appropriate rules.

Annex 24

ITALIAN INSTRUCTIONS OF 16 APRIL 1919

[Italian text not reproduced]

(Translation)

GOVERNMENT OF TRIPOLITANIA AND CYRENAICA

Instructions for the Surveillance of Maritime Fishing in the Waters of Tripolitania and Cyrenaica

All Royal Ships, Torpedo-boats, Vedette boats and Motorboats cruising or in navigation in the waters of the Libyan colonies have the obligation, under all circumstances, of performing the direct surveillance of the coast, particularly as concerns everything having to do with the practices of fishing and coastal trading.

The practice of both, in addition to being regulated by special concessions or laws, and therefore not being public domain, lends itself easily to any kind of smuggling activity, for which reason it will be necessary to exercise maximum interference in these respects and at any time there will arise the occasion of sighting small craft or sail boats along the coast or off shore. And since under any circumstances an inspection aboard shall be allowable to verify compliance with the laws regulating fishing, it shall therefore suffice to give her the instructions regarding fishing itself as a safeguard also against other infractions concerning illegal coastal trade and contraband. The instructions to be followed by the Commanding Officers of the Royal Ships are as follows:

1. The practice of fishing fish, molluscs, crustaceans, sponges and coral along the coasts of Tripolitania and Cyrenaica, and within the limits of the territorial waters, is subject to the concession of particular permits for each type of fishing by the Port Authorities of the two Colonies.

2. The limits of the territorial waters are to be intended as established at three marine miles from the coast. It is, however, an accepted principle that all sponge colonies fronting the coast and extending without interruption even beyond the three-mile limit constitute territorial waters and therefore sponge and coral fishing on such sponge colonies, regardless of how far they extend from the coast, must be subjected to the concession of the proper permit.

3. As far as the sea border between Tripolitania and Tunisia is concerned, it was agreed to adopt as a line of delimitation the line perpendicular to the coast at the border point, which is, in this case, the approximate bearing north-northeast from Ras Adgir.

At the border between Cyrenaica and Egypt, for the purposes of fishing, the line starting from Cape Beacon, in the gulf of Solum, in direction east-northeast will be considered as the border.

Regardless as to whether they are flying the national flag or a foreign one, fishing boats found engaged in one of the kinds of fishing mentioned above within the sea limits previously described without the necessary permit or with an expired permit will be considered as engaged in illegal fishing. The fishing boats themselves will therefore be seized, brought and delivered to the nearest Harbour Office for further legal action.

4. In order to avoid possible disputes which would arise, especially in regard to the actual position of the craft at the moment of the infraction,

I establish that the lines of delimitation mentioned above be moved in a direction parallel to their own selves, until the first shall have as its point of origin Ras Makabez and the second Marsa Limreig (2 miles south-south-east of Port Bardia). In such way, there will be two areas of about eight miles each, i.e., the one toward Tunisia, included within the two lines with a N.N.E. direction, passing one through Ras Adgir and the other through Ras Makabez; and that toward Egypt, included within the two lines with an E.N.E. direction, passing one through Cape Beacon and the other through Marsa Limreig. In these two areas, although the conditions for prohibition of fishing and the right to perform an on-board inspection are still standing, the boats flying a foreign flag and not in possession of the Italian Maritime Authorities permit shall not be seized, but rather ordered away, unless the position of the site within the borders where such boats were fishing illegally can be demonstrated in an irrefutable manner even afterward.

5. In a case such as the one in the preceding paragraph, the Commanding Officer who surprised the boat in the open act shall immediately write a detailed report, which shall contain in detail all the particulars relating to the craft and its owners, as obtained from the boat's documents, and the reasons why the craft was declared in transgression of the law for fishing illegally. Such report shall then be sent to the Naval Station Command in Libya for further proceedings.

6. Fishing boats of any tonnage, be they national or foreign, shall always have in the centre of the main sail, visible from a distance, the number under which they are registered at the Port Offices, and below it the emblem of the Maritime District. Such number shall be painted in black and its digits shall be no less than 50 centimetres in height. The emblem shall be constituted by the initial capital letter of the district capital (T for Tripolitania, B for Cyrenaica), no less than 50 centimetres in height, inscribed in a circle of no less than one metre in diameter, with a 7 centimetre wide band. Said emblem shall be painted in red.

7. During the night the boats must have the prescribed lights.

8. Should a violation of the rules prescribed in paragraphs 6 and 7 be found, the boat shall be allowed to continue fishing (provided it is in possession of the permit prescribed) but it will be fined and the necessary data for the report to the Port Authorities will be taken.

9. The persons in charge of boats engaged in sponge or coral fishing must keep a fishing log, in which will be recorded for each day of fishing the hours and the sites where the fishing took place, the quantities and the qualities according to the various categories of the product fished. For sponge fishing, the health conditions of the crew must also be recorded.

10. In the aforesaid fishing log there shall be also recorded the date of the last unloading of the product fished and the place where it was effected and deposited.

11. It is forbidden to keep aboard the fishing boats any firearms, except those for which an authorization was obtained.

12. Fishing with dynamite or with other explosive materials is prohibited, it is forbidden to throw in the water substances capable of clouding it, and of stunning or killing fish and other aquatic animals, and it is also forbidden to keep aboard the fishing boats the explosive materials mentioned above.

13. In the violations of the rules of paragraphs 11 and 12, the arms and the explosives shall be seized and the boat shall be brought to the nearest Port Office for further measures.

14. Sponge fishing may be performed only in the following manners:

with diving suit (diver);
diving (performed by skin divers);
with dredge (ganava);
with fishing spear (kamakis).

Fishing with a diving suit and with a dredge (ganava) is forbidden along the littoral of Tripolitania and Cyrenaica in the area included between the beach and the 20-metre depth line.

15. The product of sponge fishing must be brought up to the ports of Tripoli, Benghazi or Derna for the registration and to be deposited with the Italian Association for the Fishing and Commerce of Sponges.

16. The sponges fished cannot be transported by another boat; they may be transferred only to the one assigned as exclusive deposit of the fishing of each boat or group of boats.

17. Fishermen cannot leave Libyan waters until after they declared the product of their fishing and registered and deposited it.

18. In the present Summer fishing campaign, the permit applies for Tripolitania from Cape Tajura to the Tunisian Border, and for Cyrenaica to the entire coast, without delimitation.

19. Boats flying the national or a foreign flag, with or without regular fishing permits issued by the Harbour Master Office of Tripoli or Benghazi, caught in the act of fishing east of the meridian of Cape Tajura will be declared in violation of the fishing laws and therefore seized, brought and delivered to the nearest Port Office for further prosecution.

20. Any trade taking place along the coast and out of port, be it by sail or steam boats, shall be definitely subject to inspection. Once an infraction is ascertained, the craft, the material unloaded and the persons involved shall be seized, and all shall be brought to the nearest port.

22. For ships suspected of being involved in smuggling operations, special instruction shall be given case by case.

Annex 25

ITALIAN INSTRUCTIONS OF 25 JUNE 1931

[Italian text not reproduced]

(Translation)

OFFICIAL BULLETIN OF TRIPOLITANIA
ORDINANCES

MARITIME ADMINISTRATION OF TRIPOLITANIA

INSTRUCTIONS FOR THE SUPERVISION OF MARITIME FISHING IN THE WATERS OF TRIPOLITANIA

(a) *General Information*

The following provisions govern maritime fishing in Tripolitania:

(1) regulation for maritime fishing operations in Tripolitania and Cyrenaica approved by Royal Decree No. 312 modified by:

(a) R. decree No. 1712 of November 21, 1920;
(b) R. decree No. 2273 of November 22, 1925.

(2) Ministerial Decree of April 12, 1919, that establishes special rules for the fishing of sponges in Tripolitania and Cyrenaica.

(3) Gubernatorial Decree No. 541 A, of September 8, 1928, that authorizes the fishing of sponges in Tripolitania with the system of "De Fernez" equipment.

(4) R. Decree No. 1910 of October 10, 1929, that sets up an intermixed area for the fishing of sponges by fishermen of Tripolitania and Cyrenaica;

(5) regulation of the port of Tripoli approved on December 22, 1930;

(6) Gubernatorial ordinance No. 3781 (?) dated May 15, 1931, for the supply and use of the medicine box.

With respect to the supervision of fishing, regulation No. 312 of March 27, 1913, specifies that:

(Art. 2). The administration of maritime fishing is entrusted to the Authorities in charge of Merchant Marine activities in Tripolitania (Harbour Master's Office, Port Offices and Beach Delegations);

(Art. 3). To implement the rules and ascertain the related infractions the Authorities indicated in Article 2 work in unison with the Royal Navy, with the Revenue Office and with all other officers of the police force.

Based on these provisions and on the gubernatorial instructions of April 16, 1919, which are replaced by these provisions, the Royal Navy ships that go on a cruise or that are sailing in the waters of the Colony must carry on direct surveillance of fishing operations, keeping in mind that:

(1) the validity of the fishing legislation extends to the very limit of the territorial waters, that is to say up to 6 miles from the coast, but it is understood

that all the sponge algas that face the coast and that extend without solution of continuity even past the limits of the territorial waters, at whatever distance they might be from the coast, are considered as being included in the territorial waters;

(2) the sea border line between Tripolitania and Tunisia is established by an approximate north-north-east bearing from Ras Adgir, but in order to avoid any possible disputes, it has been agreed that the demarcation line originate with the same bearing from Ras Makabez in order to establish an area of approximately 8 miles in front of the Ras Adgir-Ras Makabez coast line, in which foreign flag boats that do not have a permit from the Italian maritime authorities must not be sequestered but asked to move on, unless the location in which they were spotted fishing illegally, can be established without any doubt to fall within the boundary.

(3) in the case refered to in the preceding paragraph, the Captain that has taken by surprise and caught the boat in the act, will immediately prepare a detailed report showing all the information relating to the craft, to its Captain or owner as shown on the ship's papers, as well as the grounds for the infraction;

(4) the border between Tripolitania and Cyrenaica is outlined by the meridian of Gasr el-Muktar, but with respect to the fishing of sponges, an intermixed area has been set up defined towards the sea north of the parallell of Buerat el-Hsun (31.25.00 N) to the east by the meridian of Agheila (19.13.00 E). Boats from Cyrenaica are permitted to cross the border line into waters of Tripolitania and vice versa in said area in the event of an act of God or to take on a supply of water and in any event for a period not to exceed 10 days;

This information having been stated in advance we are summarizing below the controls that must practically be exercised when encountering any fishing boats or ships:

(b) *Controls that Apply Indiscriminately to All Ships or Boats*

(1) ascertain, whether at night the lights prescribed by Article 2 of R.D. No. 164 of April 26, 1906, are kept on, which decree modifies regulation No. 577 of December 13, 1896, to avoid collisions at sea;

(2) ascertain (if the fishing-net for tunny campaign is in progress) that the ship or boat is not fishing within the exclusive area of a fishing-net for tunny concession, i.e., within 5 kilometres on the western side of the net, 1 kilometre from the eastern side and 6 kilometres in front of the fishing-net for tunny installation (Art. 45 regulation);

(3) check that the fishing permit issued by the maritime authorities is on board (Art. 19, regulation);

(4) check that the seaman in command to whom the permit was issued is aboard (Art. 23, regulation);

(5) check that no firearms are on board which have not been authorized in writing by the maritime authorities and that there are no explosives (Art. 11, regulations);

(c) *Special Controls for the Fishing of Sponges with the "Diver's Suit" Method*

(6) check that the ship does not carry on board a number of divers greater than that corresponding to the fishing duty paid (Art. 37, regulation), checking for this purpose the personnel roster issued by the Maritime Authorities which must be kept on board;

(7) check, by the use of the diving equipment, the depth and make sure that fishing is not being conducted at a depth of less than 20 metres or more than 60 metres (Art. 3 of the Spec. Rules);

(8) check to make sure that the fishing log is on board and that it is being kept in the prescribed manner (Art. 10, regulation);

(9) check to make sure that the fished sponges, immersed in water, are not smaller in diameter than was reported. Equine sponges 8 cm, fine sponges 4 cm, zymoches 4 cm. (Art. 31, regulation);

(10) check for presence and contents of the medicine box in accordance with gubernatorial ordinance No. 3784 of May 15, 1931 (Art. 3 of the special rules);

(11) check to make sure that the work shifts and the rest periods are being complied with (Arts. 5 and 6 of the Spec. Rules);

(12) check to make sure that there are no sick or injured persons aboard, which might have been unduly kept aboard without having been immediately transported ashore and reported to the Maritime Authorities (Art. 8 of the Spec. Rules);

(d) *Special Controls relating to Sponge Fishing Operations with the "De Fernez" Mask*

(13) check by means of diving equipment that fishing is not taking place in depths of less than 15 metres or of more than 50 metres (Art. 2, gubernatorial decree No. 541 A);

(14) verify that the fished sponges, immersed in water, do not have a diameter less than the following:

equine sponges 8 cm, fine and zymoches sponges 6 cm (Art. 3 of the aforementioned decree);

(15) check to make sure that at least 6 divers are on board and that each diver does not make more than six (6) dives per day (Art. 7 of the aforementioned decree);

(16) check the fishing log as referred to in No. 8;

(17) check the medicine box as referred to in No. 10;

(18) check the sick and injured as referred to in No. 12;

(e) *Special Controls for the Fishing of Sponges with the "Gangava" Method*

(19) check to make sure that the craft is not fishing during the periods of time and in the locations that are annually forbidden by appropriate decree of the Maritime Administration;

(20) check with diving equipment that fishing is not taking place at depths of less than 20 metres (Art. 30, regulation);

(21) check the dimension of the sponges as referred to in No. 9. If any are found with a smaller dimension than what is prescribed remove them and turn them over to the maritime authorities at the first landing place (Art. 31, last paragraph, regulation);

(22) check the ship's log as referred to in No. 8;

(f) *Special Controls for Boats Assigned to Fishing*

(23) check to make sure that fishing is not being carried out by the use of material thrown in the water which will weaken, stun or kill the fish and other aquatic animals (Art. 14, regulation);

(24) check if fishing with luminous sources, that said fishing is not going on during periods of time and in the locations that are annually prohibited by appropriate ordinance of the Maritime Administration of Tripolitania;

(25) verify if trawl net fishing is taking place, that the mesh of the sackcloth is not less than 20 mm on the side (Art. 17, regulation);

(26) verify that inside the Port of Tripoli, no fishing is taking place in a water space reserved for the Royal Navy or without a permit from the Harbour Master, in the space located south-west of the junction of the landing stage of the Harbour Master and the head of the November IV landing stage and that no nets or other floating equipment is being kept during the arrival or departure of the seaplanes (Arts. 116 and 118 of the regulation of the Port of Tripoli).

(g) *Infractions*

Any infraction that is spotted must be reported by a written report to the nearest port Authority.

Part of the proceeds obtained from the pecuniary fines inflicted on the violators as a result of a conviction or a settlement and from those derived from the eventual sale of the equipment or products sequestered, will be given by the Judging Authorities after deduction of the costs (as per Art. 68 of the fishing regulation) to the officers that have ascertained the infraction.

Should the infraction have been ascertained by seamen of the Royal Navy or by officers not assigned to port operations, the assigned sums of money will be turned over to their respective Corps Headquarters for distribution in accordance with particular regulations that might be in effect at the Corps level.

Should the infraction have been ascertained by officers assigned to the Harbour Master's Office or to Port or Beach Authority Offices, the proceeds will be split with half being given to the officers that signed the report of infraction and the other half being split equally among all the other non-commissioned officers and seamen on service on the day that said infraction was ascertained, except those that might be on report.

Should the infraction have been ascertained through a Royal Navy ship by persons not connected with the ship itself, one-third of the assigned sum will go to the Ship with the balance being split up in accordance with the above rules.

Annex 26

ITALIAN ROYAL DECREE OF 18 MARCH 1915, No. 402

[Italian text not reproduced]

(Translation)

ROYAL DECREE No. 402 OF MARCH 18, 1915, APPROVING THE CUSTOMS REGULATIONS FOR TRIPOLI AND CYRENAICA (*LAWS AND DECREES*, 1915, PP. 1014 AND 1050-51)

Unique Article

The attached customs regulations for Tripolitania and Cyrenaica are approved, seen, by Our order, by the proposing minister.

Article 1

The shore of the sea and the borders with the territory of the adjacent countries shall comprise the customs limit.

. . . .

Article 26

For purposes of customs surveillance, the sea within 12 maritime miles from the shore along the coasts of Tripolitania and Cyrenaica shall constitute the maritime customs zone, within which all vessels, whether foreign or Italian, may be subject to inspection by the authorities in charge of said surveillance.

Within the confines of said zone, the customs agents shall have the authority to board vessels of tonnage no greater than 200 tons and require them to produce their board manifest and other shipping documents.

Vessels bound for ports in the colony and that lack a manifest or that are suspected of criminal activities within the zone of maritime surveillance shall be escorted by the agents to the nearest customs house for the drawing up of a record of preliminary investigation.

If a vessel of a tonnage not exceeding 200 tons and bound for a foreign port is found within the surveillance zone without a manifest or with a manifest that lacks the prescribed information, the agents may escort her out of the limits of the zone or, in cases suggesting criminal activities, escort her to the nearest customs house for the drawing up of a record of preliminary investigation.

The agents may, having drawn up such a record, sequester whatever goods of which the importation or exportation is prohibited and that are found on board ships whithersoever bound that, except in cases involving acts of God, have dropped anchor and are lying to within a radius of 12 maritime miles from shore.

In case of attempts to unload goods onto shore and also to unload onto or transship to a lighter vessel, the agents may require the ship to follow them to the nearest customs house for the drawing up of a record of preliminary investigation.

Annex 27

ITALIAN ROYAL DECREE OF 6 JUNE 1940, NO. 595

[Italian text not reproduced]

(Translation)

BERTHING AND STAY, DURING WARTIME, OF NATIONAL MERCHANT SHIPS, WARSHIPS AND NEUTRAL MERCHANT SHIPS IN THE TERRITORIAL WATERS OF THE KINGDOM AND ALBANIA, THE EMPIRE, THE COLONIES AND POSSESSIONS (ROYAL DECREE No. 595 OF JUNE 6, 1940-XVIII)

Victor Emanuel III, by the Grace of God and the Will of the Nation,
King of Italy and Albania, Emperor of Ethiopia

In view of Articles 1, 2 and 15 of Law No. 969 of June 8, 1925;

In view of Article 3, No. 1, of Law No. 109 of January 31, 1926;

Having heard the opinion of the Council of Ministers:

On the proposal of Il Duce of Fascism, the Head of the Government, the Navy Minister;

We have decreed and do decree:

Article 1

During wartime, it is forbidden for national merchant ships and warships and neutral merchant ships to approach the territorial waters of the Kingdom of Italy and Albania, of the Empire, of the Colonies and possessions unless they have received authorization as specified in the following articles. The territorial waters are therefore to be considered as off limits to navigation.

Article 2

The following are considered to be zones dangerous to navigation:

(a) metropolitan waters:

the 12-mile-wide band that surrounds the continental coast and those of the following islands: Sicily, Sardinia, Elba, Gorgona, Marittimo, San Pietro, S. Antioco, Asinara, Pantelleria, Lussino, Cherso:

(b) waters of Albania:

the 12-mile-wide band along the coasts from the Yugoslav border to the Greek border and those coasts of the island of Saseno;

(c) waters of North Africa:

the 12-mile-wide band along the coasts from the Tunisian border to the Egyptian border;

(d) waters of the Aegean:

the 12-mile-wide band around the coasts of the islands of the Possession as far as the meeting point with the Turkish territorial waters.

Annex 28

ARTICLE 210 OF THE LIBYAN CONSTITUTION

[Arabic text not reproduced]

(Unofficial Translation)

LIBYAN CONSTITUTION OF 7 OCTOBER 1951

Article 210

All the laws and regulations and orders and proclamations in force in any part of Libya at the time the Constitution entered into force, provided that they are not contrary to principles of liberty and equality granted by it, remain in force until they are cancelled, amended or replaced by other legislations promulgated according to the provisions of this Constitution.

Annex 29

LIBYAN LAW NO. 2 OF 1959

[Arabic text not reproduced]

(Translation)

The Official Gazette
of the United Kingdom of Libya, No. 7,
31 March 1959 — 22 Ramadan 1378 H. Year IX

THE LAW DELIMITING LIBYAN TERRITORIAL WATERS

The Senate and the House of Representatives have passed the following law, which,

We, Idris the First, King of the United Kingdom of Libya, have sanctioned and do hereby promulgate.

Article (1)

The Libyan Territorial Waters shall be fixed at 12 nautical miles.

Article (2)

The Prime Minister and the Ministers each within the area of his competence shall execute this Law which shall take effect from the date of its publication in the Official Gazette.

IDRIS.

Issued at Dar as-Salem Palace
on 10 Shaban 1378 H.
Corresponding to 18 February 1959

By Order of the King
(Signed) Abdel MAJEED KHABAR,
Prime Minister and
the Minister of Foreign Affairs.

Ibrahim BEN SHABAN,	Ismail BEN LAMEEN,	Nasser AL-KHESA,	Wahbi AL-BOORY,
Minister of Defense	Minister of Finance	Minister of Communication	Minister of State
Abu BAKR NAAMA,	Abdel HAMJD EDDIBANI,	Abu BAKR AHMED,	Rajab BEN KATOO,
Minister of Education	Minister of Justice	Minister of Health	Minister of National Economy

Annex 30

LIBYAN LAW NO. 12 OF 1959

[Arabic text not reproduced]

(Translation)

STATUTE 12 FOR THE YEAR 1959 CONCERNING FISHING FOR SPONGE

I, Idris the First, King of the United Libyan Kingdom, have approved and published the following statute previously concluded by both Houses of Representatives and the Senate:

SECTION ONE. GENERAL ORDERS

Article 1

Fishing for sponge is permitted only in those areas specified by the chief of transportation in the district.

Article 2

No one is permitted to engage in fishing for sponge unless he has obtained a licence for that purpose. The licensing will be issued either in the form of a Special Licence or a Commitment to fish in all or some marine areas.

The licence will be granted according to the conditions set in this statute. The commitment will be regulated by a Special Statute.

Article 3

The fees for issuance of fishing licences will be determined by the Minister of National Economy.

Article 4

Ship owners, seamen and divers may, according to law, form co-operative organizations for the purpose of fishing for sponge. These organizations will be exempted from registration fees.

Article 5

1. Fishing in the areas specified is allowed only by ships registered in Libya according to the Libyan maritime law.

Foreign vessels are not allowed to fish in these areas unless in accord with a treaty in which Libya has entered, and then not before a fishing licence has been obtained.

2. Vessel means all boats, yachts and residence ships used in fishing projects.

SECTION TWO. ON THE PROCEDURE AND CONDITIONS OF LICENSING

Article 6

Applications for a licence must be submitted to the proper office in the district concerned. The Chief of Transportation will issue at the beginning of every year, a statement in the official gazette of the district showing the following:

A. Date to submit applications;
B. Specification for the number of licences to be issued during the season for the different types of fishing stated in Article 22. This specification must be agreed to by the Minister of National Economy;
C. The date for granting licences to their new owners.

Article 7

Requirements of licence applicant:

A. He must be of Libyan nationality;
B. He must not be convicted of a felony or crime of dishonour or dishonesty unless he was later completely exonerated;
C. His name must be registered in the commercial register if he employs five or more divers in the fishing project.

During the ten years following the enactment of this Statute, the nationality requirement may be overlooked.

Article 8

The licence application form must contain the following information:

A. The name, title, nationality and place of residence of the applicant;
B. The name and nationality of the ship and the name of the port at which it is registered and its registration number and load data;
C. The name of the captain of the ship the applicant intends to employ, his nationality, the name of the port at which he is registered and his registration number;
D. The name of the storage ship, its nationality and load, the port at which it is registered and its registration number;
E. The name of the captain of the storage ship, the port at which he is registered and his registration number;
F. A statement on the methods requested for fishing on the condition that it is one of those specified in Article 22;
G. The name of the foreman employed to supervise fishing, his title and nationality. If he himself is the applicant, he should mention this in the application;
H. A statement of knowledge of this statute must be made, copies of which must be given to the captain of this fishing ship and the captain of the residence ship;
I. If the ship designated for fishing is owned by another party, the applicant must submit a written statement from the owner allowing its use for this purpose. The owner's permission must show the period for using the ship and the fishing means intended for use.

Article 9

One licence is granted per ship, and its granting by the Chief of Transportation will be the sole responsibility of the licensee, with no ensuing responsibility whatsoever on the part of the authority issuing it regardless of the acceptance by the crew, divers or any other person.

Article 10

The Chief of Transportation will specify in the statement mentioned in Article 6 the number of licences to be granted to foreign ships whose governments have signed agreements with the Libyan Government for sponge fishing in the Libyan territorial waters.

If such agreements do not exist, the Chief of Transportation may permit temporary issuance of a limited number of licences to other foreign ships if this is deemed economically beneficial to the country, on the condition that he obtains, in advance, the approval of both the Ministries of the Exterior and the National Economy, and submits licence application through them.

Article 11

If the applicant fails to receive the licence issued to him on the prescribed date, the Chief of Transportation may cancel it and offer the licence to another who meets the legal conditions required, taking into consideration the priority of applicants.

Article 12

In the absence of violations of rules set in this statute, foreign ships whose owners request licences to fish in territorial waters because of international agreements, are subject to the following rules:

1. The application must be submitted by the consul or his deputy of the country the ship is subject to, through the Ministries of the Exterior and National Economy.
2. Official certificates, authenticated by the consul, must be submitted stating the following:
   - A. The fitness of the ship for navigation, the soundness of its engine and equipment, especially the diving equipment, if there was any;
   - B. The availability of health conditions on board, including the necessary medical aid supplies;
   - C. The availability of food supplies, and their storage in clean areas on board;
   - D. The application of medical examination procedure on all the crew and divers by the authorities concerned in the country the ship is subject to;
   - E. Accident insurance by insurance agencies approved by the foreign country and whose responsibility extends to Libya.

Article 13

All ships, Libyan and foreign, must deposit, at the time of receiving the licences, all their papers and documents for safe keeping at the fishing office according to Libyan maritime law.

These papers will be returned to the ship at the end of the fishing season after it submits to the office its licence and a full account of the amounts of sponge fished, their types, weight in kilograms, value in Libyan pounds, the areas at which each type was fished, and a statement from the Department of Customs or Ports indicating the payment of required fees.

There must be attached to this account a list of the type and weight of the amount fished by each diver, its value, the advance the diver received during the season; this list must be signed by both the diver and the captain.

Article 14

All licensed ships that intend to fish outside the Libyan waters must obtain a special permit from the fishing office concerned before sailing. They must also state at that time, the weight, type and value of the amounts fished in Libyan territorial waters.

Libyan ships must carry their licences when they sail for fishing in foreign waters.

SECTION THREE. ON FISHING SHIPS AND THEIR INSPECTION

Article 15

Ships which use mechanical equipment in their operation should have an engine.

Article 16

The person who is in charge of the operations should provide storage ships of the following types:

1. One storage ship carrying no less than 10 tons for each fishing ship.
2. A residence ship whose load is not less than 20 tons for two fishing ships.
3. A residence ship whose load is not less than 30 tons for three fishing ships.
4. A residence ship whose load is not less than 40 tons for four fishing ships.
5. A residence ship whose load is not less than 50 tons for five fishing ships.

Suppliers may agree to use one residence ship for a number of fishing ships not to exceed the number stated in this article, taking into consideration the close distance between the fishing zones licensed for each of them. This agreement must be written and presented to the authorities concerned before the issuance of a licence.

Article 17

The supplier must provide the fishing and residence ships with boats and sufficient equipment to use in saving the crew. A licence will not be issued until these have been inspected.

The ship-master must make sure of the presence of these boats and equipment before it sails.

Article 18

Subject to inspection before the issuance of a licence are every residence ship or fishing ship in which divers use mechanical means. The inspection, after the ship has been prepared for fishing, will ensure the following conditions:

A. The good condition of the ship's engine, instruments and equipment;
B. The good condition of diving instruments;
C. The availability of fishing equipment and their fitness for use;

D. The availability of spare parts for fishing and diving instruments;
E. The sufficiency of food supplies and their storage in clean areas;
F. The healthy physical condition of members of the crew, ensuring in particular that divers are in condition good enough to allow them to dive or continue diving;
G. The first-aid box must contain the medicines and medical supplies that the divers may need.

Article 19

The ship's inspection is carried out in the following manner:

A. A marine engineer is to be in charge of inspecting the ship, navigation instruments, and lifeboats and their equipments.
B. A mechanical engineer will inspect the ship's engine and all its systems and instruments, also the divers' mechanical instruments and related gear such as clothing, pipes, the metallic head gear and other accessories.
C. The port's medical officer must examine the physical condition of all members of the ship's crew and make sure the first-aid box contains the necessary medicines and medical supplies.

Article 20

Fishing ships must be identified on both sides of the prow by the letter (S) to indicate they are designated sponge fishing ships. The letter (T) is to be added if the ship works in the district of Tripoli, or the letter (B) if it works in the district of Bargha.

These letters, together with other signs required by law, are to be fixed with the knowledge of the fishing office concerned. They must be well maintained and clearly legible.

SECTION FOUR. ON THE CONDITIONS AND RULES OF FISHING

Article 21

Sponge fishing is prohibited if the sponge's diameter is less than eight centimetres in the Quina type, and if it is not more than six centimetres in all other types.

The fishing office is to designate the locations where the sponge already fished is to be unloaded under the supervision of the public authority men.

Article 22

Fishing for sponge is prohibited unless one of the following methods is followed:

A. Al-Scavendor (with swim suit and mechanical instrument);
B. Al-Furness (with mask and mechanical instrument);
C. Al-Saleeb (with mask and manual instrument);
D. Al-Sibaha (without clothes or instrument);
E. Al-Fusina (the spear).

The Chief of Transportation, with the approval of the Minister of National Economy, may issue orders for the use of other methods of fishing besides the methods mentioned, or for the prohibition of fishing by one of them in some areas or at certain times if it is deemed beneficial for fishing.

Article 23

It is prohibited to change the method of fishing indicated in the licence unless the issuing authority approves a request submitted and giving reasons for the change.

Article 24

It is not permitted to exceed the following depths when using divers in fishing:

10 metres in the method of Al-Saleeb;
35 metres in the method of Al-Furness;
60 metres in the method of Al-Scavendor.

Article 25

Divers must not stay underwater from the time of diving to the time of surfacing beyond the following periods, and the ship-master must supervise that:

A. In the method of Al-Scavendor:

Depth	*Period underwater from time of diving*	*Surfacing period*
from 10 to 20 metres	30 minutes	15 minutes
from 21 to 30 metres	20 minutes	15 minutes
from 31 to 35 metres	15 minutes	15 minutes

B. In the method of Al-Furness:

from 10 to 20 metres	30 minutes
from 21 to 30 metres	20 minutes
from 31 to 35 metres	15 minutes
from 36 to 40 metres	10 minutes

Article 26

The diver is prohibited to dive two consecutive times; he is also prohibited to repeat diving except after all other divers on board have taken their turn. At all times he is not permitted to dive more than four times in one single day.

Article 27

The diver must surface from the sea bottom to the water surface by means of the special rope known as the guide rope (Jwaida). In the method of Al-Scavendor he is prohibited to take off his diving gear before 30 minutes have passed from the time of his surfacing above water.

SECTION FIVE. ON THE SHIP'S CREW

Part One. On the Ship-Master

Article 28

The master of a fishing ship that employs five or more divers working with mechanical instruments, and the master of residence ship are required to:

A. Be of Libyan nationality;
B. He must not be convicted of a felony or a crime of dishonour or dishonesty unless he is later exonerated;
C. His name must be registered in the seamen register;
D. He must successfully pass the examination held before he is conferred the status of master;
E. He must have engaged in marine work for a period not less than three years under the supervision of an approved master, and must submit a statement signed by him certifying that he worked under his supervision for the period mentioned. During the ten years following the implementation of this Bill, the nationality condition may be overlooked.

Article 29

The examination mentioned in the preceding article will cover the following subjects:

A. Knowledge of using the mariner's compass;
B. Duties of the ship-master according to the orders of marine law;
C. The prescribed directives for avoidance of collisions;
D. Procedures to avoid accidents and injuries divers may fall subject to;
E. Measures of aiding divers when they are injured away from ports and the use of medicines in emergencies.

Article 30

The examination will be administered by a committee composed of the following persons or their deputies in case of their absence:

Harbour Master	Chairman
Fishing Office Representative	Member
Port's Medical Officer	Member

If the applicant passes the examination the status of shipmaster will be conferred on him.

Part Two. On the Duties of Ship-Master

Article 31

The ship-master is not authorized to order the ship to sail for fishing unless it has on board all seamen necessary for operating the machines, and for navigation and manoeuvres according to the prescribed orders; the ship must also have on board all the divers and the person in charge of signals exchanged with the diver while under water.

It is not permitted to make any changes in crew men unless a written permit has been obtained from the fishing office concerned.

No one other than the ship-keeper or his representative, and other than the members of the crew, is permitted to be on board the fishing ship during its operation in the areas it is licensed to fish in.

Article 32

The ship-master must, before sailing, make sure of the following:

A. All machines, equipment and tools must be in good condition to ensure their protection against damage, and make them fit for immediate use. In particular he must secure the safety of the diving equipment and their fitness for use during the season and inspect the diving suit and air pipes and provide all the needs of the diver while operating under water;

B. Life boats and equipment in good condition;

C. Spare parts sufficiently available to meet any breakdown in the ship or diving operations;

D. Food supplies sufficient for the ship men during the period of their absence, and the storage of these supplies in places protective against spoilage and damage.

Article 33

The master of a ship that uses mechanical instruments of any kind in fishing must do the following before the start of daily operations:

A. Inspect these instruments, the air compressor, the metallic head gear, the air pipes and valves, the diving outfit to ensure their safety and fitness;

B. Measure the water depth where fishing will take place using the designated instrument to make sure it corresponds with the depth permitted for fishing and which is indicated in the licence.

Article 34

The ship-master must verify prior to the diving operation that the diver knows thoroughly the functions of the instruments he uses in his job, and the special signals he exchanges with the ship during his dive.

Article 35

The ship-master must maintain a record book in which he enters daily observations on fishing, the areas in which it takes place, the depth of water, the weather conditions, the accidents and injuries that befall the ship or crew men, and other observations and information he considers necessary to record.

Article 36

The ship-master is considered responsible for the ship from the time it sails till the time it returns. He is to execute all the orders related to his job whether they are set in this Bill or any other Bill.

Neither the ship-keeper nor his representative, if he happens to be on board for fishing supervision, is to interfere in any of the ship's affairs.

Article 37

If the ship returned to port because of the termination of operations in the fishing season, its master or its supplier must notify the fishing office of that.

Part Three. On Seamen and Divers

Article 38

Two registers are to be established in the fishing office, one for the registration of divers licensed to engage in diving, and the other for the registration of seamen licensed to work in fishing ships.

Orders are to be issued regulating the conditions and requirements pertinent to this register.

Article 39

The age of a person who works as diver must not be less than 18 years and not more than 60. A person whose age is less than 21 years may not be registered in the divers register until a written consent by his guardian has been obtained.

Article 40

A diver or a seaman is not to be employed in the fishing profession unless his name is registered in one of the two registers mentioned in Article (38), and unless he possesses a registration card.

Employment will be on the grounds of a written employment contract signed by both parties and witnessed by the fishing officer.

Every contract not in compliance with the orders of this article is invalid.

Article 41

If the ship-keeper is an alien he must obtain a special permit to employ Libyan divers or seamen. The permit is to be issued by the transportation head office in the district that issues the licence; and the contracting will not be valid until this permit has been obtained.

The orders of this Bill will apply to the contract.

Article 42

The contract between the contractor and the seamen, including the captain is based upon the monthly salary, or on the basis of this salary plus an agreed-upon share of the sponge gathered by the sponge boat during the seasons.

The contract between the contractor and the divers is also based upon a share of the gathered sponge. Under all circumstances, the contractor is to bear all the feeding, supply and accommodation expenses and other aspects related to the sponge-gathering project.

Article 43

The sponge-gathering captain is to be sure that all divers' and other seamen's families are cared for during the sponge gathering period. If needed, the captain is permitted to force the boat's owner to pay a portion of the divers' or seamen's salary to their families.

Article 44

If one of the seamen or divers did not get on board the boat after he had been notified of its sailing date, the contractor has the right to breach the contract, request what had been advanced and ask to be compensated for—if it could be justified.

Article 45

The boat's captain is to point out to the divers and seamen their individual duties as described in their employment contract. Each is to perform his work as is asked to and to be on time and at the right place that the captain specified.

Article 46

The seaman or diver cannot be asked to perform a job not within his skill or not included in his employment contract unless he has been ordered to by the captain because of extraordinary circumstances, or a danger threatening the boat, the people on board or its cargo, the seaman or diver then will not be entitled for extra pay for these works.

The crew on board the boat is considered to be united towards saving it and themselves.

Article 47

The seamen and divers are entitled for a paid rest period of 24 hours for every six working days. They are also entitled for a paid rest day on official holidays.

If the need arises to ask them to work during the holidays they are entitled to another rest day at a later time or they could be compensated for by double pay for the duration of the time worked during those holidays. In this case, the divers' salary is based upon the highest salary paid to a seaman.

Article 48

The port director is to settle any sponge gathering disputes arising between the boat's captain, seamen or divers. If the director cannot settle the dispute amicably, he is then to write a report and send it to the concerned court to take the necessary action. The court will not accept any cases unless this measure has been taken.

CHAPTER SIX

ACCIDENTS AND INJURIES

Article 49

The contractor is to insure the lives of the seamen, divers and captain against work accidents and resulting injuries. The boat will be granted a permit after a letter presentation by the Social Security Organization stating that the contractor has paid his insurance fees and that the insurance covers the present employees as well as the new ones who are working during the same season. The Transportation Office is to mark that on the permit.

Article 50

At the end of the sponge gathering season, the contractor is to have his divers, seamen and captain inspected by the port's doctor after their return to port to be sure of their safety. If anyone is injured or sick, the doctor is to take the necessary medical measures and inform the sponge gathering office. Under all circumstances, the doctor is to register his results in their register book.

Article 51

The captain and the contractor are to inform the sponge gathering office of all accidents or injuries occurring on board or to the boat itself in order for it to be marked down in its register and permit.

Article 52

The contractor is responsible for treating the captain, seamen and divers in case of their illness or injuries and is to pay their wages under the following conditions:

A. If the illness or injury is a result of the work, all medical expenses are to be paid by him during the treatment period, but not to exceed 120 days. He is to pay their full wages during this period;

B. If the illness or injury are not the result of work, but not done on purpose or are not due to carelessness on the part of the patient:

then the contractor is to pay his treatment expenses for a maximum period of 120 days; yet, he is entitled to be reimbursed for expenses that exceed an 80-day period. He also has to pay the full wages during the treatment period if it does not exceed 80 days;

C. If the sickness or injury is a result of misbehaviour, drunkenness or is done on purpose, the contractor is to pay the treatment expenses, as long as the patient is on board the boat; but, he is not obliged to pay his wages during that time;

D. The diver's salary in A and B above is based upon the highest salary paid to a seaman;

E. The contractor then could claim all expenses to the insurance company which will reimburse him according to the terms of their contract.

Article 53

An illness or injury is to be proven by testimony from the doctor of the port. Those concerned could question the doctor's judgment by referring to the committee stated in Article 55.

Article 54

The port's doctor is to observe the patient's injury or illness through his treatment period. The doctor is to prove whatever information or knowledge he gets in writing on the patient's or injured's card and special register. In case of death, the doctor is to write a report of its causes.

Article 55

The captain, seamen and divers could be prevented from carrying on their responsibilities when the port's doctor proves that they are not physically fit. Their permit would then be cancelled.

They could question the doctor's judgment by presenting a petition to a committee to be formed by authorization from the health supervisor. The contractor could also question the doctor's judgment, in front of the same committee, if he determines that they can work.

Article 56

If the seaman or diver dies as a result of his accident the boat's captain is to carry the dead body to the nearest port where there is a government authority.

The captain is to present the authorities with a detailed report of the causes and conditions of the accident. The police authorities have to detain the boat and its crew and guard its machines until all investigations are complete and the cause of death has been established.

The boat would be permitted to sail again after being granted a permission from the Public Defence. All this has to be done at utmost speed.

Article 57

The contractor is to bear the burial expenses of the boat's captain, one of its seamen or divers if they die while on duty. If it is decided that an indemnity be awarded to the family of the deceased, and the contractor does not pay it, the Transportation Supervisor could then withdraw the boat's permit. He will only regain it after he presents an official acknowledgement from the heirs that he has executed the indemnity requirements according to Article 49.

CHAPTER SEVEN

CRIMES AND PUNISHMENTS

Article 58

The contractor, captain, one of the divers or seamen could be sentenced to six months imprisonment and the payment of a fine not exceeding 100 guineas, or with either of the two if he does not abide by any of the clauses of this law or the published bulletin.

Article 59

The sponge gathering equipment and the gathered sponge would be confiscated if the sponge gathering took place without a permit in the Libyan Territorial Waters. The confiscation ruling could also take place if the sponge gathering took place in an area other than the one that had been authorized.

Article 60

The court could stop the boat's permit for no more than six months at the time of a guilty ruling. The authorities concerned could confiscate the boat during that time at the responsibility and expense of its owner.

Article 61

Whoever possesses, owns, sells, transfers, or deals in any way with sponges that do not meet the requirements stated in Article 21, would be sentenced according to the terms of Article 58 and the cargo confiscated.

Article 62

The employees appointed by the Commission Supervisor have the legal power to check for all violations breaching this law and regulations.

Article 63

The Minister of National Economy, based on the suggestion of the Communications Supervisor in the concerned States, shall promulgate the appropriate regulations to implement this law.

Article 64

The Minister of National Economy is to enforce this law after two months of its publication in the official paper.

IDRIS.

Issued at Dar El Yemen Palace on 9 Moharra, 1379 Hejreyah = 15 July 1959.

By order of the King

Ragab BEN KATO,
Minister of National Economy.

Abdel MEGUID KAABAR,
Prime Minister.

Royal Decree

Law amending some rules of Law 12 of year 1959 regarding fishing for sponge.

We Idris the First, King of the United Kingdom of Libya,
After reviewing Article 64 in the Constitution, and Law 12 of year 1959 regarding fishing for sponge, and according to what is presented to us by the Minister of Industry, and the approval of the Council of Ministers,
We issue the following:

Article One

The expression "Minister of National Economy" and "Ministry of National Economy", which appear within the paragraphs of law 12 of year 1959 regarding fishing for sponge, are to be replaced by the expression, "Minister of Industry".

Article Two

The Minister of Industry is to enforce this Decree, and to be effective from the date of its publication in the official paper.

IDRIS.

Issued in Al Beydaa on 8 Rabei El Awal, 1382 Hejreyah = 8 August 1962.

By order of the King

Mohammed OSMAN EL SEID,
Prime Minister.

Belkassem AL ELAKI,
Minister of Industry.

Annex 31

LIBYAN DECISION NO. 1 OF 1960 AND DECISION NO. 1 OF 1961

[Arabic text not reproduced]

(Translation)

5. SPONGE

8

A. TRIPOLI'S LEGISLATION

Decision No. 1 for the year 1960—Restricted Areas in which sponge could be gathered [1], the Transportation Supervisor for the Province of Tripoli (Tarablus Al Gharb)

after reviewing Article 1 of Law No. 12 for the year 1959, with respect to sponge fishing,

It was decided

Article 1

The areas in which sponge fishing may be permitted are situated along the coast of the Province of Tripoli, as follows:

1. *Local spongers:* From the point of Ras Abi Kammash to the north-east, between longitudes 30°-22° east, and Afra Quarry which is located at longitudes 17°-14° east. This quarry is between Al Khums and Zlitan of the northern and eastern provinces.
2. *Foreign spongers:* Starting point is from Abi Kammash and along the same degrees mentioned in the above item, and to end at the

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Decision No. 1 for the year 1961—Restricted Areas in which sponge could be gathered [1], the Transportation Supervisor for the Province of Tripoli (Tarablus Al Gharb)

after reviewing Article 1 of Law No. 12 for the year 1959, with respect to the gathering of sponge and Decree No. 1 for the year 1960 for restricting the areas in which sponge could be gathered, published in the official newspaper dated May 1, 1969.

It was decided

Article 1

The areas in which sponge gathering is permitted are along the coastal strip of the Province of Tripoli, as follows:

1. *Local spongers:* from the Head (Ras) Aghdeer at the demarcations of longitudes 30°-34°-11° east to Zliton Quay at the demarcation of longitudes 00-34°-14° east and the water across.
2. *Foreign spongers:* foreign spongers are permitted to gather sponge

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[1] Tripoli's official newspaper, No. 9, dated 1 May 1961.

[1] Tripoli's official newspaper, No. 5, dated 1 May 1961.

port of Tripoli between longitudes 11°-13°east.

Article 2

This decision will be effective as of its published date in the official newspaper.

Abdallah ALZIDAM,
Transportation Supervisor.

in the Province of Tripoli from Head (Ras) Aghdeer, from the same demarcations mentioned in the above paragraph, to the area west of Tripoli's port lighthouse, i.e., in the demarcations of longitude 00-07°-13°east and the water across from it.

Article 2

This decision will be effective as of its published date in the official newspaper.

Shams AL DEEN MOHSEN,
Transportation Supervisor.

Annex 32

LIBYAN PETROLEUM LAW NO. 25 OF 1955

[Arabic text not reproduced]

The Official Gazette of the United Kingdom of Libya,
No. 4, 19th June 1955—29th Shawwal 1374, Vol. V

LAW NO. 25 OF 1955

THE PETROLEUM LAW 1955

The Senate and the House of Representatives have passed the following Law, which,

We, Idris the First, King of the United Kingdom of Libya, have sanctioned and do hereby promulgate:

Article 1

Petroleum property of State

(1) All petroleum in Libya in its natural state in strata is the property of the Libyan State.

(2) No person shall explore or prospect for, mine or produce petroleum in any part of Libya, unless authorized by a permit or concession issued under this law.

Article 2

Establishment of petroleum commission

(1) There is hereby established a public autonomous juridical Petroleum Commission, having a separate Budget annexed to the Budget of the appropriate Ministry, which shall consist of a Chairman and at least three other members to be appointed and removed from office by Decree on the submission of the Prime Minister with the agreement of the appropriate Provincial authorities. A representative appointed by the Minister may attend meetings of the Commission, but shall have no vote in the proceedings.

(2) Members of the Commission shall, as far as possible, be persons of experience in finance, economics, commerce, law or engineering. No Minister, Nazir or Member of Parliament or of any Legislative Assembly shall be appointed to the Commission and any member who is elected or appointed to one of these posts shall immediately cease to be a member of the Commission.

(3) The Commission shall, in the name of each and every Province, be responsible for the implementation of the provisions of this Law under the supervision of the Minister.

(4) All decisions in respect of the grant, assignment, renewal, surrender or revocation of any permit or concession under this Law shall be made by the Commission and shall be immediately submitted to the Minister for approval or

rejection. All decisions of the Minister and of the Commission shall be notified in writing without delay to all interested parties.

(5) The Commission shall determine its own rules of procedure which shall provide that the quorum shall consist of three-quarters of its members, that its decisions shall be by a two-thirds majority vote of those present at any meeting and that in case of an equal division the Chairman shall have a casting vote.

(6) The Commission shall appoint a Director of Petroleum Affairs (hereinafter called "the Director") who shall carry out such duties as are assigned to him under this Law and the two Schedules hereto and such other duties as may be assigned to him by Regulations issued under this Law or by the Commission. The Commission shall also appoint such other officials as may be necessary.

(7) All expenditure approved by the Government and incurred by the Commission including the remuneration of its members and staff shall be paid out of the Federal Budget.

Article 3

Petroleum zones

For the purposes of this Law, the territory of Libya shall be divided into four petroleum Zones:

The First Zone shall consist of the Province of Tripolitania;

The Second Zone shall consist of that part of the Province of Cyrenaica which lies north of the 28th parallel of latitude;

The Third Zone shall consist of that part of the Province of Cyrenaica which lies south of the 28th parallel of latitude;

The Fourth Zone shall consist of the Province of the Fezzan.

Article 4

Boundaries

(1) This Law shall extend to the seabed and subsoil which lie beneath the territorial waters and the high seas contiguous thereto under the control and jurisdiction of the United Kingdom of Libya. Any such seabed and subsoil adjacent to any Zone shall for the purposes of this Law be deemed to be part of that Zone.

(2) If there is doubt as to the boundary of any Zone the Commission shall determine the boundary of such Zone for the purposes of this Law only; and if by reason of such determination it becomes necessary for the applicant to amend his application, or to make a new application, he shall be allowed one month to do so after receipt of a request so to do, without loss of priority.

(3) If a subsequent determination of the boundaries leads to an adjustment of the boundaries as determined by the Commission, such adjustment shall not affect the validity or extent of permits or concessions granted within the area or areas affected by the adjustment.

Article 5

Eligible applicants

(1) The Commission shall consider applications for permits or concessions submitted by eligible applicants only, and in determining the eligibility of any applicant, the Commission shall have regard to the following:

(a) the furtherance of the public interest;
(b) (i) the applicant's compliance with relevant Laws and Regulations;
  (ii) his previous activities in the petroleum industry;
  (iii) his previous experience in the conduct of similar operations;
  (iv) his financial and technical capacity to conduct the contemplated operations.

(2) In determining the eligibility of an applicant who is a subsidiary of a company or a member of a group of companies, there shall be taken into consideration the possession of the aforesaid qualifications by the parent company or group of companies of which he is a member and the extent of the availability to the applicant of such qualifications.

Article 6

Permits

(1) Applications for permits shall be submitted in triplicate to the Commission which shall forward a copy to the Minister. Separate applications shall be submitted in respect of each petroleum Zone.

(2) The applications shall show the area the applicant desires to work, and contain short particulars in respect of the matters referred to in Article 5 of this Law. The applicant shall, at the Commission's request, furnish any further relevant information. All information submitted under this paragraph shall be treated as confidential.

(3) The Commission may grant a permit in the form set out in the First Schedule to this Law and not otherwise, provided that the permit may contain such minor non-discriminatory variation as may be required to meet the circumstances of any particular case.

(4) Such a permit may be granted in respect of any area and shall entitle the holder thereof to carry out the operations permitted therein within the specified area and in accordance with the terms of the permit; provided however, that nothing in this paragraph shall entitle the holder of the permit to impede in any way the work of any concession holder, or to enter into prospecting and development sites without the express permission of the concession holder.

(5) The grant of a permit does not of itself entitle the holder thereof to a concession in respect of any area.

(6) A permit shall be granted on payment of the fee specified in the First Schedule hereto.

(7) A permit may be granted for a period of one year and may be renewed on payment of the specified fee.

Article 7

Applications for concessions

(1) Applications for concessions shall be submitted in triplicate to the Commission which shall forward a copy thereof to the Minister.

(2) The application shall show by reference to the official map of the Commission the area the applicant desires to work, which area shall conform as far as possible to the grid lines of the official map of the Commission and shall contain short particulars in respect of the matters referred to in Article 5 of this Law. The applicant shall, at the Commission's request, furnish any further

relevant information. All information submitted under this paragraph shall be treated as confidential.

(3) No single application shall relate to more than one petroleum Zone.

Article 8

Conflicting applications

(1) If more than one person submit applications for concessions over areas which overlap in whole or in part, preference shall be given to the first person to apply to the Commission, provided that the following applications shall be deemed to be simultaneous:

(a) all applications for concessions received by the Commission before midnight of the seventh day after the coming into force of this Law;
(b) thereafter all applications submitted on the same day.

(2) All simultaneous applications for concessions over areas which overlap in whole or in part shall be dealt with as follows:

(a) the Commission shall call together the representatives of the applicants and invite them to settle their conflicting applications between themselves within 30 days or such longer period as the Commission may deem necessary and to amend their applications accordingly within the same period. Applications may be amended by the addition of other areas provided that the maximum area permitted under this Law is not exceeded but such additional areas may not overlap any area then included in any application submitted simultaneously with the original application. Any amended application shall be deemed to have been submitted on the date of the original application;
(b) if the applicants fail to agree, the Commission shall mediate between them and in the course of the mediation, the applicants and the Commission shall together consider all methods of settlement proposed by each of them;
(c) in order to facilitate settlement under this paragraph, the Commission shall, subject to Article 2 (4) of this Law, allow without delay an increase in the maximum number of concessions unless this is contrary to the public interest;
(d) if an agreement by mediation cannot be reached, the Commission may either require the applicants to pool the overlapping area or areas, divide the overlapping area or areas into blocks and distribute such blocks by lot, or may adopt such other objective solution as it deems appropriate.

Article 9

Grant of concessions

(1) The Commission may grant concessions in the form set out in the Second Schedule to this Law and not otherwise, provided that they may contain such minor non-discriminatory variations as may be required to meet the circumstances of any particular case.

(2) Before the grant of a concession, the Commission may require the applicant to furnish a written undertaking to abstain from all political activity in Libya.

(3) An applicant may be required before the grant of a concession to deliver to the Commission a guarantee by way of bond or banker's guarantee in a sufficient sum not exceeding fifty thousand Libyan pounds (£L.50,000) to secure the due performance of his obligations under all concessions held by him in

Libya. Such bond or banker's guarantee shall be maintained at a constant figure throughout the life of the concession, and such bond or banker's guarantee shall be accepted by the Director of Customs in lieu of any bond he may require under the Customs Law.

(4) Concessions shall be granted for the period of time requested by the applicant provided that such period shall not exceed fifty (50) years. A concession may be renewed for any period such that the total of the two periods does not exceed sixty (60) years.

(5) No concession may be granted in respect of any area included in any existing concession granted hereunder.

(6) The Commission may however grant concessions covering adjoining areas lying in two or more Zones.

(7) The boundaries of every concession granted hereunder shall conform as far as possible to the grid lines of the official map of the Commission.

(8) The maximum number of concessions and the total areas which may be held at one time by any person are as follows:

(a) three concessions in each of the First and Second Zones and four concessions in each of the Third and Fourth Zones provided that:

   (i) the Commission may grant concessions in excess of the maximum number permitted hereunder and shall give reasonable consideration to applications submitted for that purpose;

   (ii) no concession in which there is an oil or gas well shall be included in computing the number of concessions held by a concession holder;

(b) 30,000 square kilometres in each of the First and Second Zones and 80,000 square kilometres in each of the Third and Fourth Zones.

(9) If the Commission deems it to be necessary in order to develop areas not included in any pending application or existing concession, the Commission may cause to be published in the *Official Gazette* a notice inviting applications for concessions in respect of those areas and may grant concessions in accordance with the provisions of this Law to persons who submit such applications and for the purpose of this paragraph, such applicants shall be deemed not to hold any concessions in the Zone concerned at the time of such application.

(10) The concession holder shall have the right to enter and occupy free of charge for the purposes of his operations under any concession granted under this Law any land within the concession area other than private land, provided it is not then in the lawful occupation of some person.

(11) If the concession holder fails to agree with a private landowner or lawful occupier of other than private land as to the terms on which he may enter and occupy the land in question the concession holder shall immediately notify the Director. If the occupation is to be of a temporary nature, not exceeding one year, the Director shall authorise such temporary occupation upon deposit by the concession holder with the Commission of a sum by way of reasonable compensation to such landowner and/or lawful occupier for loss of use of and damage to the interest in the land as the Director shall determine. If the occupation is to be for a longer period than one year the Commission shall authorise occupation by the concession holder of the land in question upon deposit by the concession holder with the Commission of such sum by way of reasonable compensation as the Commission shall determine and the Commission shall direct appropriate proceedings to be taken to put the concession holder into possession of the land under the law from time to time in force, as if the concession

holder's operations were in all respects a work of public utility. In the event of any dispute as to the nature and extent of the interests of claimants to the land or the amount of compensation payable by the concession holder, the Commission shall refer the dispute for determination by an appropriate court of Law and the Commission shall pay to the respective claimants such sum by way of compensation as may have been determined by the Court. The Commission shall pay to or obtain from the concession holder (as the case may be) the amount by which the sum deposited by the concession holder exceeds or falls short of the total compensation payable to the claimants.

(12) The concession shall not confer upon the concession holder the right to do any work within the precincts of cemeteries, places used for religious worship and places of antiquity as defined in the Antiquity Laws from time to time in force. Any works of art or antiquity discovered by the concession holder shall be subject to the law from time to time in force.

(13) No drilling or any dangerous operations shall be conducted within 50 metres of any public works or permanent buildings without the previous consent of the Director, and subject to such conditions as he may impose.

Article 10

Surrender

(1) Within a period of five years from the date of a concession, the concession holder shall reduce the concession area to 75 per cent of its original size; within eight years from the said date, the concession holder shall further reduce the concession area to 50 per cent of its original size and within ten years from the said date the concession holder shall further reduce the concession area to 33⅓ per cent of its original size in the case of areas located in the First and Second Zones and to 25 per cent of its original size in the case of areas located in the Third and Fourth Zones, provided however that in no case shall the concession holder be required at any time to reduce the concession area to less than 3,000 square kilometres each in the First and Second Zones and to less than 5,000 square kilometres each in the Third and Fourth Zones.

(2) The concession holder shall be entitled at any time, by giving three months notice in writing to the Commission to surrender the whole or any part of a concession area.

(3) The areas which the concession holder gives up under paragraphs (1) and (2) shall be freely chosen by the concession holder in one or more blocks provided that the block or blocks retained by the concession holder shall each be reasonably compact and be bounded as far as possible by the grid lines of the official map of the Commission. The concession holder shall continue to enjoy the full rights granted to him under the respective concession contract over the areas retained by him.

(4) Notice of surrender shall be accompanied by a map referring to the official map of the Commission and a description indicating the precise extent of the land surrendered and the land retained.

(5) The concession holder shall in respect of any lands he gives up as aforesaid, except as provided in Clause 26 of the Second Schedule to this Law, cease to enjoy any of the rights conferred upon him by the concession and to bear any of the responsibilities thereby imposed upon him except as may relate to the action of the concession holder in the said lands before they were given up, without prejudice to the rights of the concession holder to the easements he may exercise over the surrendered areas.

Article 11

Working obligations

(1) The holder of any concession granted under this Law shall, within eight months of the grant of such concession, commence operations to explore for petroleum within the concession area. He shall diligently prosecute all his operations under the concession in a workmanlike manner and by appropriate scientific methods. In furtherance thereof he shall spend in Libya, or elsewhere, not less than the following sums or their equivalent on, or in connection with, the said operations including general organizational, overhead and administrative expenses connected therewith:

(a) In respect of all concessions in the First and Second Zones:

During the first five years at the average rate, over the period and over the total area held in the Zone, of one-and-a-half Libyan pounds (£L1½) per square kilometre per annum;

During the next three years at the average rate, over the period and over the total area held in the Zone, of three-and-a-half Libyan pounds (£L3½) per square kilometre per annum;

and thereafter during each successive five year period at the average rate over such period of six Libyan pounds (£L6) per square kilometre per annum.

(b) In respect of all concessions in the Third and Fourth Zones:

During the first eight years at the average rate, over the period and over the total area held in the Zone, of one-and-a-half Libyan pounds (£L1½) per square kilometre per annum;

During the next four years at the average rate, over the period and over the total area held in the Zone, of three-and-a-half Libyan pounds (£L3½) per square kilometre per annum;

and thereafter during each successive five year period at the average rate over such period of six Libyan pounds (£L6) per square kilometre per annum.

(2) Any sum spent during any of the working periods specified above in excess of the minimum sum prescribed for that period shall be carried forward as a credit to the Company against the expenditure requirements for the following period or periods.

(3) If at the expiration of one-half of any of the working periods specified in subparagraphs *(a)* and *(b)* above it appears to the Commission that a concession holder has seriously neglected his obligations in respect of any Zone, the Commission may require such concession holder to deliver to it a guarantee in the form of a bond or banker's guarantee in a sum which shall not exceed the total outstanding expenditure obligations remaining unfulfilled in that Zone. Such guarantee may at the end of the said period be forfeited to the Commission to the extent that the concession holder may have failed to fulfil his expenditure obligations.

Article 12

Pipeline facilities

Any concession holder having surplus pipeline capacity shall make such surplus capacity available for the transport of petroleum of other persons on terms and conditions to be agreed which shall conform with those normally prevailing in the petroleum industry.

Article 13

Fees, rents and royalties

The concession holder shall in respect of each concession granted hereunder pay:

(a) a fee of five hundred Libyan pounds (£L500) upon the grant of the concession;

(b) subject to the provisions of the Second Schedule hereof the following surface rents for each 100 square kilometres held:

(i) for concessions located within the First and Second Zones; ten Libyan pounds (£L10) for each of the first eight years, twenty Libyan pounds (£L20) for each of the next seven years or until petroleum is found in commercial quantities, whichever is the earlier; and
two thousand five hundred Libyan pounds (£L2,500) for each year thereafter;

(ii) for concessions located within the Third and Fourth Zones: five Libyan pounds (£L5) for each of the first eight years, ten Libyan pounds (£L10) for each of the next seven years or until petroleum is found in commercial quantities, whichever is the earlier; and
two thousand five hundred Libyan pounds (£L2,500) for each year thereafter;

(c) a royalty of 12½ per cent as provided in the Second Schedule hereto which shall abate any rents payable in accordance with Clause 9 of the Second Schedule.

Article 14

Taxation and Division of Profits

(1) The concession holder shall pay such income tax and other taxes and imposts as are payable under the Laws of Libya but shall not be subject to any form of taxation or other exaction of such a nature as to render him liable to taxation or other dues not payable by persons in general operating in Libya other than fees, royalties and surface rents made payable under this Law:

Provided however that—

(a) if in respect of any complete year after the effective date as hereinafter defined the total amount of the fees, rents, royalties, income taxes and other taxes and imposts for which a concession holder is liable in respect of operations and income therefrom under all the petroleum concessions held by him in Libya falls short of 50 per cent of his profits as hereinafter defined during that year, the concession holder shall pay to the Commission such sum by way of surtax as will make the total of his payments equal to 50 per cent of such profits;

(b) if in respect of any complete year after the effective date the total amount of the fees, rents, royalties, income taxes and other taxes and imposts for which the concession holder is liable as aforesaid exceeds 50 per cent of the said profits of the concession holder during that year, he shall be entitled to

deduct from his total payments to be made to the Commission a sum equal to such excess. If the sum which the concession holder is entitled to deduct exceeds his unpaid liability in any year, the excess shall be considered as an advance payment of any sums payable to the Commission in the following year or years.

(2) In this Article—

"effective date" means the date on which the concession holder first reaches a level of regular exports of petroleum averaging fifteen thousand (15,000) barrels a day measured over a period of thirty consecutive days under all his concessions in Libya or the expiry of four years from the date when petroleum is first exported regularly by the concession holder, whichever in the earlier;

"profits" for the purposes of paragraphs (1) *(a)* and *(b)* means in respect of any year the income of the concession holder obtained from all his petroleum exploration, prospecting, mining and producing activities in Libya in that year after deducting:

(a) all expenses and losses, except fees, rents, royalties, income taxes and other taxes and imposts payable, incurred by the concession holder in carrying out such activities and properly attributable thereto irrespective of where incurred. Exploration and prospecting expenses, intangible drilling costs as defined in the Regulations, to the extent such expenses and costs are not incidental to the procurement or installation of physical assets, the cost of drilling wells not productive of petroleum in commercial quantities and expenses of organizing and initiating petroleum operations in Libya, may be deducted in the year in which they are incurred or they may be capitalized and amortized as provided below. The election to deduct or to capitalize as aforesaid may be made annually by the concession holder. The unamortized balance of the cost of physical assets abandoned during the year may be deducted in the year of abandonment;

(b) an amount in respect of amortization during that year of capital expenditures on physical assets used in connection with such operations, and of expenses incidental to their procurement and installation, computed in the case of all such expenditures incurred before the effective date, irrespective of the date incurred, at a rate, not exceeding 20 per cent per annum, to be elected annually by the concession holder, until all such expenditures are fully amortized; and in the case of all such expenditures incurred on or after the effective date, at a rate not exceeding 10 per cent per annum, to be elected annually by the concession holder, until all such expenditures are fully amortized;

(c) each year for depletion allowance irrespective of the amounts so deducted in any previous years, an amount equal to 25 per cent of the gross income of the year, as hereafter defined, but limited to 50 per cent of the profits of the year computed after deduction of the amounts specified in subparagraphs *(a)* and *(b)* above but before deducting the amount specified in this subparagraph. Gross income for the year for the purposes of calculating this depletion allowance shall consist of income derived from the disposal of petroleum produced by the concession holder in Libya less the cost of handling and transporting it to the place of such disposal.

In lieu of the aforesaid deduction the concession holder may in any year deduct an amount for the amortization of all capital expenditure made in connection with such operations other than those made on physical assets, incurred before the effective date, irrespective of the date incurred, at the rate of 20 per cent per annum, and in the case such capital expenditures incurred on or after the effective date at the rate of 5 per cent per annum until such expenditures have been fully amortized by virtue of all deductions made under this subparagraph *(c).*

(3) Where in respect of any year the total of the deductions taken under paragraph (2) of this Article for the determination of profits exceeds the gross income in respect of that year before taking the said deductions, the excess shall be carried forward and, as far as may be, deducted from the profits of subsequent years up to a maximum of 10 years.

(4) A permit or concession holder who participates in joint operations in connection with such permit or concession may, in respect of such operations, report his rateable proportion of income therefrom and expenses therein and make all permitted elections independently of the other persons participating in the joint operations, provided that one or more of the persons in the joint operations is carrying out other independent operations in Libya under this Law. Income and expenses so reported may be consolidated with those in respect of other operations being carried out by him in Libya under this Law.

(5) In computing profits as herein defined sound accounting practices usual in the petroleum industry shall be employed.

Article 15

To whom fees, rents, royalties, surtaxes and income taxes payable

All fees, surface rents, royalties and surtaxes levied under this Law and income taxes shall be paid to the Commission which shall transmit the payments to the appropriate authorities.

Article 16

Exemption from certain import and export duties

(1) A permit or concession holder or any contractor employed by him may import free of duty, plant, machinery, tools, equipment and materials together with such other goods as may be specified from time to time in Regulations issued under the Customs Law intended to be used in Libya for petroleum exploration, prospecting, mining, transporting, processing operations and activities connected therewith. Provided, however, that such exemption shall not apply to any goods included in this paragraph which are available in Libya of suitable type and reasonably comparable quality, and at no higher price, provided that in comparing prices to the price of the imported goods shall be added Customs duties and other expenses incurred up to the time the imported goods reach Libya.

(2) Other goods which are dutiable under the Customs Law shall be subject to the payment of the appropriate duty.

(3) Any person intending to sell or transfer any goods which have been imported free of duty under paragraph (1) hereof shall before such sale or transfer make a declaration to the Customs Department and shall, unless such goods are sold or transferred to another permit or concession holder or contractor entitled to the same exemptions, pay on demand such import duty as may be assessed by the Director General of Customs in accordance with the Customs Law.

(4) Petroleum or any of its derivatives produced in Libya, and any goods imported free of duty under paragraph (1) hereof may be exported free of Cus-

toms duty and without an export licence subject to the policy of the Government regarding exports in general and to such restrictions as the State may impose by Law on production and exports during a state of war or emergency.

Article 17

Assignment of permits and concessions

(1) Permits shall not be assigned except with the consent of the Commission provided also that the assignee shall be one or more companies which

(a) control the assignor; or
(b) are controlled by the assignor; or
(c) are controlled by one or more companies who themselves control the assignor; provided that in the aforesaid cases the control may be direct or indirect.

(2) A concession holder may assign his concession in whole or in part to one or more companies if the assignee

(a) controls the assignor; or
(b) is controlled by the assignor; or
(c) is controlled by one or more companies who themselves control the assignor; provided that in the aforesaid cases the control may be direct or indirect and provided that the assignee satisfies the conditions laid down in Article 5 of this Law.

(3) In other cases a concession may not be assigned except with the consent of the Commission subject to such conditions as it may deem appropriate.

Article 18

Revocation of permits and concessions

A permit or concession granted under this Law may be revoked only in the circumstances and in the manner set out in the said permit or concession.

Article 19

Publication

Notice of the grant, renewal, assignment, revocation, termination or surrender of the whole or any part of any permit or concession shall be published in the Official Gazette of the United Kingdom of Libya and of the appropriate Province.

Article 20

Arbitration and force majeure

(1) Any disputes between the Commission and the concession holder arising from any concession granted under this Law shall be settled by arbitration in the manner set out in the Second Schedule hereto.

(2) In the event of Force Majeure, the rights and obligations of the parties to a concession granted hereunder shall be those specified in the Second Schedule hereto.

Article 21

Refining

(1) A concession holder who discovers petroleum in Libya and who desires to refine it in the country shall have the right to construct, maintain and operate a refinery for this purpose in accordance with any legislation governing the refining of petroleum.

(2) Should refineries be established in Libya the Commission may require a concession holder to make available at field storage to such refineries, pro rata with other concession holders and at field storage price, sufficient quantities of crude oil from his production in all concessions in Libya to meet the domestic consumption requirements of Libya in respect of petroleum products; provided however that the concession holder shall not be required to furnish or build additional handling or transportation facilities for this purpose.

Article 22

Penalties

(1) Any person found guilty of exploring for, or prospecting for petroleum in any part of Libya without the authority of a permit or concession issued under this Law shall be liable to a fine not exceeding five hundred Libyan pounds (£L500). If petroleum has been mined, he shall on conviction be liable to the penalty provided by law for larceny and to a fine of five hundred Libyan pounds (£L500) or treble the value of any petroleum produced whichever is the greater, and any petroleum mined or produced shall be forfeited to the Government of Libya.

(2) Any person entitled under paragraph (1) of Article 16 to import free of duty the goods referred to therein who intentionally uses such goods for purposes other than those specified therein, or transfers such goods to any person not entitled to exemption contrary to Article 16, paragraph (3), or fails to make the declaration to the Customs Department before the transfer of any such goods as required by the said paragraph hereof, shall be liable on conviction to the penalty provided in Article 95 of the Customs Law of 1954.

(3) Any public official or employee who has been entrusted with or who has come to know of any confidential information by virtue of this Law and who divulges such information shall be liable to the penalties provided for in Article 236 of the Penal Code.

(4) In the implementation of this Law, the Regulations and decisions made hereunder the Chairman and other members of the Commission, the Director and other competent officials shall have the capacity of Investigating Officials.

(5) The persons mentioned in the previous paragraph shall have the right to enter the premises of the concession holder and inspect his work, books, registers and papers to ensure the proper implementation by the concession holder of the provision of this Law, the Regulations and decisions made hereunder and the provisions of the Permit or Concession.

Article 23

Definitions

In this Law:

"Minister" means the appropriate Minister;

"permit" means a preliminary reconnaissance permit issued under this Law;

"concession" means a petroleum prospecting, mining and producing concession issued under this Law;

"person" includes any body corporate or other juridical person;

"oil or gas well" means a well capable of producing oil and/or gas in quantities susceptible of measurement;

"petroleum" means all natural hydrocarbons, liquid or gaseous, produced or producible from the ground and all asphalt and other solid hydro-carbons suitable for the production of liquid petroleum or gas. Petroleum does not include coal;

"direct control" means the control of any company exercised by any other company or companies holding shares carrying a majority of votes at a general meeting of the first mentioned company;

"indirect control" means the control of any company (hereinafter in this subparagraph called "the particular company") exercised by any other company or companies (hereinafter in this subparagraph called "the parent company or companies") where a series of companies can be specified, beginning with the parent company or companies and ending with the particular company, in which each company of the series, except the parent company or companies, is directly controlled by one or more of the companies in the series;

"year" means a calendar year according to the Gregorian calendar;

"barrel" means forty-two (42) gallons U.S. or 158,984 litres of liquid petroleum;

"processing" means any operation connected with the treatment of petroleum with the exception of fractional distillation.

Article 24

Regulations

The Commission shall prepare such Regulations as may be necessary for the implementation of this Law, including Regulations for the safe and efficient performance of operations carried out under this Law, and for the conservation of the petroleum resources of Libya, and shall submit such Regulations to the Minister for approval and promulgation provided that no Regulation or alteration thereof shall be contrary to or inconsistent with the provisions of this Law or adversely affect the contractual rights expressly granted under any permit or concession in existence at the time the Regulation is made or altered.

Article 25

Title and coming into force

(1) This Law may be cited as the Petroleum Law 1955 and shall come into force thirty days after publication in the Official Gazette.

(2) As from the date on which this Law comes into force the provisions of the Mineral Law 1953 shall cease to apply in so far as they relate to petroleum, except that any permit issued under the Minerals Law 1953 shall continue in force until its normal expiry date.

IDRIS.

Given at Dar-Assalaam Palace on 28th Sha'ban 1374 h.
Corresponding to 21st April 1955 g.

By order of the King

Salem AL-QADI,
Minister of National Economy.

Mustafa BEN HALIM,
Prime Minister.

FIRST SCHEDULE

PRELIMINARY RECONNAISSANCE PERMIT FOR PETROLEUM

The Petroleum Commission (hereinafter called "the Commission") hereby grants the following Permit under the Petroleum Law 1955 to . . . . (hereinafter called "the Company") having its Registered Office at . . . .
. . . .

1. The Company is authorized to carry out preliminary exploration for petroleum on the following conditions.

2. Preliminary exploration for petroleum includes surface geological reconnaissance, aerial surveys and surface geophysical operations commonly used in the petroleum industry. The drilling of exploration wells, mechanical core drilling and seismic operations will not be allowed under this permit.

3. The area over which the Company may explore is as follows, and is described in the Annexes to this Permit and is indicated on the attached map.

4. The duration of this Permit is for one year, commencing on the date of signature, and work shall begin as soon as possible after that date. The Company shall notify the Director of Petroleum Affairs (hereinafter referred to as "the Director") in writing of the date of commencement of its activities.

5. Within thirty days after the termination of the said period of one year, the Company shall submit to the Director a report containing a description of the work done. The report shall be in triplicate and accompanied by maps, records and by some rock samples.

6. The discovery of water or valuable minerals shall also be reported to the Director with all available data.

7. All reports will be treated as confidential.

8. The Director or officials of his Department designated by him for this purpose have the right to inspect the activities of the Company.

9. The Permit holder shall not impede in any way the works of any concession holder, or enter into prospecting and development sites without the express permission of the concession holder.

10. Except as provided for in clause 2 hereof, the issue of this Permit does not confer on the Company any rights or privileges with regard to the prospecting or mining for petroleum.

11. If the Company fails to comply with any of the applicable provisions of the Petroleum Law 1955, or of this Permit, the Permit may be revoked by the Commission.

12. The Permit shall not be assigned except with the consent of the Commission provided also that the assignee shall be one or more companies which:

(a) control the assignor; or
(b) are controlled by the assignor; or
(c) are controlled by one or more companies who themselves control the assignor: provided that in the aforesaid cases the control may be direct or indirect.

13. This Permit is granted on payment of a fee of five hundred Libyan pounds (£L500).

For the Company . . . .
For the Commission . . . .
Date . . . . The Minister . . . .
Corresponding with . . . .

SECOND SCHEDULE

THE CONCESSION

This Deed of Concession is concluded on the . . . . day of . . . . 19 . . under the Petroleum Law of 1955:

Between

The Petroleum Commission (hereinafter called "the Commission") in the name of the Province of . . . . and with the approval of the Minister

and

. . . . (hereinafter called "the Company") having its registered office at . . . . represented by . . . . who is legally authorized to act on behalf of the Company by virtue of a Power of Attorney dated . . . . which has been produced by him.

THE CONCESSION

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Clause 1

Grant of concession

In consideration of the undertaking by the Company to make the annual payments and pay the fees, rents and royalties hereinafter prescribed and to perform and observe the terms and conditions of this Concession, the Commission hereby grants to the Company, subject to the conditions hereof and the provisions of the Law, the exclusive right for a period of . . . . years to carry out geological investigations, including aerial surveys, and to search for by any other means, bore for, and extract petroleum within and over the area outlined in red on the map annexed hereto of approximately . . . . square kilometres situated in the . . . . Zone bounded and defined as follows:

The Company shall also have the right to take away such petroleum whether by pipeline or otherwise from the concession area and to use, process, store, export and dispose of the same.

Clause 2

Surrender of concession area

In accordance with Article 10 of the Law the Company shall progressively reduce the area of the Concession and shall have the right at any time to surrender the whole or any part of the concession area.

Clause 3

Renewal of concession

The Concession may be extended for any period such that the total duration shall not exceed 60 years.

If the Company requires a renewal it shall submit to the Commission an application in writing for such renewal not more than five years and not less than three years before the end of the term of this concession.

The Commission shall advise the Company of its decision within one year of the receipt of the application.

Clause 4

Working obligations

(1) The Company shall, within eight months from the date of the grant of this concession, commence operations to explore for petroleum within the concession area and shall diligently prosecute all its operations under the concession in a workmanlike manner and by appropriate scientific methods. In furtherance thereof the Company shall spend in Libya or elsewhere on, or in connection with, the said operations including general organizational, overhead and administrative expenses connected therewith such sums as may be required in order to comply with the provisions of Article 11 of the Law.

(2) Any sum spent during any of the working periods specified in Article 11 of the Law in excess of the minimum sum prescribed for that period shall be carried forward as a credit to the Company against the expenditure requirements for the following period or periods.

Clause 5

Company to follow good oil field practices

The Company shall carry on all its operations under this Concession in accordance with good oil field practices and so that when petroleum is found it shall be produced in reasonably substantial quantities having regard to the world demand for petroleum and economic exploitation of the petroleum resources of the concession.

Clause 6

Surface rents

The Company shall in accordance with Article 13 of the Law and Clause 9 (2) of this Concession pay the following surface rents for each 100 square kilometres held:

£L . . . . for each of the first . . . . years
£L . . . . for each of the next . . . . years
or until petroleum is found in commercial quantities whichever is the earlier and £L2,500 for each year thereafter.

Clause 7

Royalty

(1) The Company shall pay a royalty of twelve and one-half per centum of the value on the field of production of all petroleum (excluding natural gas) won and saved into field storage, freed of water and foreign substances, and of all natural gasoline recovered by the Company from the concession area, after deduction of the quantities of such petroleum, petroleum products and natural gasoline used by the Company in the course of its operations hereunder.

(2) The value of crude oil under this clause shall be:

(a) The average free competitive market price during the previous quarter f.o.b. Libyan seaboard terminal of crude oil of the same or nearest comparable type with such adjustments for quality and gravity as normally prevail

in the oil industry minus handling charges and costs of transportation from field storage;

(b) In the absence of a price f.o.b. Libyan seaboard terminal under subparagraph *(a)* hereof, the average free competitive market price during the previous quarter f.o.b. at the nearest seaboard terminal outside Libya for which such a price is published for petroleum of reasonably similar quality and gravity with such adjustments for quality gravity and location as normally prevail in the oil industry to arrive at a fair competitive market price f.o.b. Libyan seaboard and minus handling charges and the costs of transportation from field storage to Libyan seaboard terminal.

(3) The value of natural gasoline and petroleum other than crude oil and natural gas shall be calculated in a manner to be agreed upon from time to time between the Director and the Company. From such value shall be deducted the cost of its extraction and processing.

(4) The Company shall also pay a royalty of twelve and one-half per centum on the sale price less the cost of transport from the wellhead to the place of sale realized in respect of all natural gas derived from the concession area and sold by the Company in Libya. The royalty on natural gas exported shall be based on the sale price at the point of sale after deducting handling charges, duties and imposts and costs of transportation from the wellhead.

Clause 8

Taxation and division of profits

(1) The Company shall pay such income tax and other taxes and imposts as are payable under the Law of Libya but shall not be subject to any form of taxation or other exaction of such a nature as to render it liable to taxation or other dues not payable by companies in general operating in Libya other than fees, royalties and surface rents made payable under this Concession and the Law:

Provided however that—

(a) if in respect of any complete year after the effective date as hereinafter defined the total amount of the fees, rents, royalties, income taxes and other taxes and imposts for which the Company is liable in respect of operations and income therefrom under all the petroleum concessions held by the Company in Libya falls short of 50 per cent of the Company's profits as hereinafter defined during that year, the Company shall pay to the Government such sum by way of surtax as will make the total of the Company's payments equal to 50 per cent of such profits;

(b) if in respect of any complete year after the effective date the total amount of the fees, rents, royalties, income taxes and other taxes and imposts for which the Company is liable as aforesaid exceeds 50 per cent of the said profits of the Company during that year, the Company shall be entitled to deduct from the total payments to be made to the Commission a sum equal to such excesses. If the sum which the Company is entitled to deduct exceeds the Company's unpaid liability in any year the excess shall be considered as an advance payment of any sums payable to the Commission in the following year or years.

(2) In this Clause—

"effective date" means the date on which the Company first reaches a level of regular exports of petroleum averaging 15,000 barrels a day measured over a period of 30 consecutive days under all its concessions in Libya or the expiry of 4 years from the date when petroleum is first exported regularly by the Company, whichever is the earlier;

"profits" for the purposes of paragraph (1) *(a)* and *(b)* mean in respect of any year the income of the Company obtained from all its petroleum exploration, development, prospecting and producing activities in Libya in that year after deducting:

(a) all expenses and losses, except fees, rents, royalties, income taxes and other taxes and imposts payable, incurred by the Company in carrying out such activities and properly attributable thereto irrespective of where incurred. Exploration and prospecting expenses, intangible drilling costs as defined in the Regulations, to the extent such expenses and costs are not incidental to the procurement or installation of physical assets, the cost of drilling wells not productive of petroleum in commercial quantities and expenses of organizing and initiating petroleum operations in Libya, may be deducted in the year in which they are incurred or they may be capitalized and amortized as provided below. The election to deduct or to capitalize as aforesaid may be made annually by the Company. The unamortized balance of the cost of physical assets abandoned during the year may be deducted in the year of abandonment:

(b) an amount in respect of amortization during that year of capital expenditures on physical assets used in connection with such operations, and of expenses incidental to their procurement and installation, computed in the case of all such expenditures incurred before the effective date, irrespective of the date incurred, at a rate, not exceeding 20 per cent per annum, to be elected annually by the Company, until all such expenditures are fully amortized; and in the case of all such expenditures incurred on or after the effective date, at a rate not exceeding 10 per cent per annum, to be elected annually by the Company, until all such expenditures are fully amortized;

(c) each year for depletion allowance irrespective of the amounts so deducted in any previous years, an amount equal to 25 per cent of the gross income of the year, as hereafter defined, but limited to 50 per cent of the profits of the year computed after deduction of the amounts specified in subparagraphs *(a)* and *(b)* above but before deducting the amounts specified in this subparagraph. Gross income for the year for the purposes of calculating this depletion allowance shall consist of income derived from the disposal of petroleum produced by the Company in Libya, less the cost of handling and transporting it to the place of such disposal. In lieu of the aforesaid deduction the Company may in any year deduct an amount for amortization of all capital expenditures made in connection with such operations other than those made on physical assets, incurred before the effective date, irrespective of the date incurred, at the rate of 20 per cent per annum, and in the case of such capital expenditures incurred on or after the effective date at the rate of 5 per cent per annum until such expenditures have been fully amortized by virtue of all deductions made under this subparagraph *(c)*.

(3) Where in respect of any year the total of the deductions taken under paragraph (2) of this Clause exceeds the gross income in respect of that year before taking the said deductions, the excess shall be carried forward and, as far as may be, deducted from the profits of subsequent years up to a maximum of 10 years.

(4) If the Company shall participate in joint operations, it may, in respect of such operations, report its rateable proportion of income therefrom and

expenses therein and make all permitted elections independently of other companies participating in the joint operations, provided that one or more of the companies in the joint operations is carrying out other independent operations in Libya under the Law. Income and expenses so reported may be consolidated with those in respect of other operations being carried out by the Company in Libya under the Law.

(5) In computing profits as herein defined sound accounting practices usual in the petroleum industry shall be employed.

Clause 9

Method of making payments

(1) The fees, surface rents, royalties and surtaxes payable hereunder and income taxes shall be paid by the Company to the Commission. The collection of such sums shall be subject to the procedure provided by the Financial Laws and Regulations of Libya.

(2) The Company shall pay the surface rents specified in Clause 6 hereof annually in advance until such time as royalty becomes payable by the Company under Clause 7 hereof. Thereafter surface rents and royalties shall be calculated in respect of each quarter and shall be paid by the Company to the Commission within 60 days after the last day of the quarter. Sums payable by way of surface rents under Clause 6 hereof in respect of any quarter shall be reduced by the amount of any royalty payable hereunder in respect of the same quarter.

Clause 10

Exemption from certain import and export duties

(1) The Company or any contractor employed by the Company may import free of duty, plant, machinery, tools, equipment and materials together with such other goods as may be specified from time to time in Regulations issued under the Customs Law intended to be used in Libya for petroleum exploration, prospecting, mining, transporting, processing operations and activities connected therewith. Provided, however, that such exemption shall not apply to any goods included in this paragraph which are available in Libya of suitable type and reasonably comparable quality, and at no higher price, provided that in comparing prices to the price of the imported goods shall be added Customs duties and other expenses incurred up to the time the imported goods reach Libya.

(2) Other goods which are dutiable under the Customs Law shall be subject to the payment of the appropriate duty.

(3) If the Company or any contractor, as the case may be, intends to sell or transfer any goods which have been imported free of duty under paragraph (1) hereof, a declaration shall be made to the Department of Customs before such sale or transfer is effected and, unless such goods are sold or transferred to another company or contractor entitled to the same exemptions, such import duty shall be paid as may be assessed by the Director General of Customs in accordance with the Customs Law.

(4) Petroleum or any of its derivatives produced in Libya, and any goods, imported free of duty under paragraph (1) hereof may be exported free of Customs duty and without an export licence subject to the policy of the Government regarding exports in general and to such restrictions as the State may impose by Law on production and exports during a state of war or emergency.

Clause 11

Exchange control

The Company shall be subject to the normal exchange control applicable in Libya provided however that:

(a) the Company shall be entitled to retain abroad all funds acquired by it abroad including the proceeds of sales in so far as such funds may exceed the Company's requirements for the purposes of its operations in Libya, but statements of foreign exchange holdings or proceeds of sales of Libyan petroleum shall be rendered to the Libyan National Bank in such form and at such periods as it may require;

(b) the Company shall be entitled to remit any funds held by it in Libya in excess of its requirements in Libya in the primary currency in which the Company's investment in operations under this concession was made, to the country from which the primary currency originated;

(c) the Company shall be entitled to buy and sell solely for the purposes of its own operations in Libya and remittances under paragraph *(b)* above any currency whether Libyan or otherwise at the most favourable rate of exchange available through authorized banking channels to any other buyer or seller in Libya of such currency;

(d) no restriction shall be placed on the importation of funds by the Company for the purpose of carrying out its operations under this concession.

Clause 12

Ancillary rights

For the purpose of its operations under this concession the Company shall have the following rights in the concession area:

(a) with the approval of the Director, to drill for water and impound surface waters and to establish systems for the supply of water for its operations and for consumption by its employees;

(b) with the approval of the Director to carry away and use in Libya materials such as gravel, sand, lime, gypsum, stone and clay which shall be free of charge in the case of such materials taken from lands other than private lands;

(c) to erect, set up, maintain and operate houses, fences, engines, machinery, furnaces, buildings, pipelines, storage tanks, compressor stations, pumping stations, processing plants, field roads and all other constructions, installations and works required in furtherance of its activities. The Company may likewise for such purposes, erect, set up, maintain and operate all other communication and transportation systems and facilities but shall not do so, other than for temporary purposes, unless drawings of and locations for their sites have been submitted to and approved by the Director.

Clause 13

Transport rights

The Company shall have the right for the purposes of its operations to erect and operate a harbour and terminal facilities together with the necessary means of communication and transport between such facilities and any part of the concession area, provided that the consent of the appropriate authorities to the location of such works shall be obtained. Such consent shall not be unreasonably withheld or delayed. The Company shall likewise have the right under similar conditions to build and maintain pipelines elsewhere outside the concession area for the transport of petroleum produced under this concession. In exercising such right the Company may occupy land in accordance with the provisions of Clause 14 hereof and erect and maintain thereon any communication and transportation systems and facilities and other fixtures which it requires for the installation, servicing, maintenance and operation of such pipelines.

Clause 14

Right to occupy land

(1) The Company shall have the right to enter and occupy free of charge for the purposes of its operations under this concession any land within the concession area other than private land, provided it is not then in the lawful occupation of some person.

(2) If the Company fails to agree with a private landowner or lawful occupier of other than private land as to the terms on which it may enter and occupy the land in question the Company shall immediately notify the Director. If the occupation is to be of a temporary nature, not exceeding one year, the Director shall authorize such temporary occupation upon deposit by the Company with the Commission of a sum by way of reasonable compensation to such landowner and/or lawful occupier for loss of use of and damage to the interest in the land as the Director shall determine. If the occupation is to be for a longer period than one year the Commission shall authorize occupation by the Company of the land in question upon deposit by the Company with the Commission of such sum by way of reasonable compensation as the Commission shall determine and the Commission shall direct appropriate proceedings to be taken to put the Company into possession of the land under the law from time to time in force, as if the Company's operations were in all respects a work of public utility. In the event of any dispute as to the nature and extent of the interests of claimants to the land or the amount of compensation payable by the Company, the Commission shall refer the dispute for determination by an appropriate court of Law and the Commission shall pay to the respective claimants such sum by way of compensation as may have been determined by the Court. The Commission shall pay to or obtain from the Company (as the case may be) the amount by which the sum deposited by the Company exceeds or falls short of the total compensation payable to the claimants.

(3) This concession shall not confer upon the Company the right to do any work within the precincts of cemeteries, places used for religious worship and places of antiquity as defined in the Antiquity Laws from time to time in force. Any works of art or antiquity discovered by the Company shall be subject to the law from time to time in force.

(4) No drilling or any dangerous operations shall be conducted within 50 metres of any public works or permanent buildings without the previous consent of the Director, and subject to such conditions as he may impose.

Clause 15

Company's labour

Subject to the provision of any Immigration Laws in force at the time, the Company is hereby allowed to bring into the country such employees as may be necessary for its operations and the competent authorities shall facilitate the entry into, exit from and movement within Libya of such employees and their dependants while such employees are engaged on the Company's operations hereunder. The Company shall have the right so to arrange its labour shifts that all operations may proceed by day and by night and during public holidays.

Clause 16

Company's rights ensured

The Government of Libya, the Commission and the appropriate provincial authorities will take all steps necessary to ensure that the Company enjoys all the rights conferred by this Concession.

The contractual rights expressly created by this concession shall not be altered except by mutual consent of the parties.

Clause 17

Saving for rights of government and others

Nothing in this concession shall be deemed to limit the right to grant concessions in respect of minerals other than petroleum in the concession area, or generally to limit the rights of the Government or any authority or person in the concession area, save as expressly provided herein; provided always that the Company's operations hereunder are not thereby endangered or interfered with nor its rights hereunder prejudiced. The Company shall not obstruct the exercise of any such right, but shall afford the holder thereof and of any concession holder as aforesaid, every reasonable facility for the exercise of their rights.

Clause 18

Employment and training of Libyan subjects

(1) Provided that the requisite number having adequate skill and ability is available, the minimum number of Libyan subjects employed by the Company in Libya after 10 years from the date of commencement of operations shall have reached at least 75 per cent of the total number of persons employed by the Company in Libya.

(2) The Company shall as from the date of commencement of regular exports from Libya of petroleum in commercial quantities produced in the concession area make an annual payment to the Libyan Government of not less than £L2,500 and not more than £L5,000, which payment shall be applied towards giving Libyan subjects such technical training as may be agreed upon by the Director and the Company, in order to fit them for employment in the petroleum industry or in related undertakings, provided however that the Company may each year reduce such payments by the amount which during that year it expended for the training and education of Libyan subjects for such purposes in Libya or abroad.

Clause 19

Water disposal

Plugging of boreholes and wells

The Company shall, in accordance with good oil field practices, provide an adequate system for the disposal of its water and waste oil, and shall securely plug all boreholes and wells made by it before they are abandoned.

Clause 20

Reports to be furnished

(1) The Company shall at its own expense furnish to the Director during the first quarter of each year a report of the progress of its operations in the concession area during the preceding year. This report shall contain:

(a) a statement of the number of bore-holes and wells drilled, including bore-holes and wells drilled in search of water, and of the depth of each, with a plan showing their location if the Director so requires;
(b) a statement of any petroleum, water or valuable minerals encountered during the course of the Company's operations;
(c) a statement of all petroleum produced, of gas sold, and of natural gasoline recovered;
(d) a statement of the amount of water produced with the oil and natural gas;
(e) the nature and extent of geological and geophysical surveys carried out;
(f) a general survey of the operations; and
(g) a statement showing the number of Libyan subjects and nationals of other countries employed by the Company in Libya.

(2) The Company shall furnish to the Director not less than 30 days before the end of each year a statement of the general programme it intends to carry out during the following year.

(3) The Company shall keep accurate financial records of its operations under this concession which records shall be open to inspection by the appropriate authorities.

(4) The Company shall furnish such further information relating to its operations in the concession area as the Director shall reasonably require.

(5) The Company shall keep accurate geological and geophysical plans, maps and records relating to the lands within the concession area.

(6) On the discovery of oil or gas, the Director shall immediately be informed of such discovery.

(7) All information furnished by the Company under this clause shall (except with the consent in writing of the Company) be treated as confidential.

Clause 21

Inspection

The Chairman and other members of the Commission, the Director and other competent officials shall have the right to enter the premises of the Company and inspect its work, books, registers and papers to ensure the proper implementation by the Company of the provisions of the Law, the Regulations and decisions made hereunder and the provisions of this Concession.

Clause 22

Measurement of petroleum

The Company shall measure and record by methods customary in good oil field practice all petroleum and natural gasoline produced and saved by the Company within the concession area as if freed of water and other foreign substances. The Director or any official designated by him shall be entitled to attend such measuring and to examine and test the accuracy of the appliances employed therein and to examine the records thereof. The Company shall assist such official in the performance of his duties under this Clause. If any such measuring appliance shall at any time be discovered to be inaccurate, the same shall, if the Director so decides, be deemed to have existed in the condition for a period of 90 days prior to the discovery of such inaccuracy, or for the period elapsed since the last occasion upon which the same was examined or tested, whichever shall be the less, and the Company's records shall be adjusted accordingly.

Clause 23

Address of local manager

The Company shall before commencing operations furnish to the Director the name and address of the Manager of the Company's operations under this concession. Any notice required to be served on the Company shall be sufficiently served if delivered at, or sent by registered post to, the Manager at such address.

Clause 24

Force majeure

Failure by the Company to carry out any of the provisions of this Concession shall not give rise to any claim or be deemed to be a breach of this Concession, if it be shown that the failure has arisen from force majeure, namely Act of God, insurrection, riots, war, strikes of workmen, or any other unforeseen circumstances beyond the control of the Company. If by reason of force majeure the fulfilment by the Company of any of the terms and conditions of this Concession or the enjoyment of its rights under the Concession is delayed the period of such delay shall be added to the period fixed herein for such fulfilment or enjoyment.

Clause 25

Assignment

(1) The Company may assign this Concession in whole or in part to one or more companies if the assignee:

(a) controls the assignor; or

(b) is controlled by the assignor; or

(c) is controlled by one or more companies who themselves control the assignor provided that in the aforesaid cases the control may be direct or indirect, and provided that the assignee satisfies the conditions laid down in Article 5 of the Law.

(2) In other cases assignment may not be made except with the consent of the Commission, and subject to such conditions as it may deem appropriate.

Clause 26

Right to remove property

On the surrender of any area and on the expiration or earlier determination of this concession, the Company shall, except as hereafter in this clause provided, be entitled to remove all its property of whatever nature situated within the surrendered area or the concession area as the case may be. Well casings and well heads may not however be removed unless adequate protective measures are taken to the satisfaction of the Director. Fixtures necessary to control the flow of gas or liquid from the well head may not be removed without the approval of the Director. No taxes, duties or charges whatsoever other than any specifically made payable hereunder, shall be imposed in connection with such removal. The Director, may, however, within a period of 30 days following any surrender or expiration or earlier determination, elect to purchase any property which theretofore was used by the Company solely and exclusively in connection with its operations within the surrendered area or the concession area. Such purchases will be made at a fair price to be determined by agreement between the Director and the Company. Failing such agreement the matter shall be referred to an independent expert or panel or experts as may be agreed between the Director and the Company. Such panel shall consist of one member to be appointed by the Director, another member to be appointed by the Company and a third member to be chosen by the two members appointed. The expert or panel, as the case may be, shall determine what, in the circumstances, is a fair price for the property. The wells, and any well casings, well heads and fixtures not removed as aforesaid shall be handed over to the Director free of charge within 30 days following the surrender or expiration or earlier determination. The Director may require the Company to restore the surface of the land to a reasonable condition in accordance with good oil field practice, taking into account normal wear and tear caused by the Company's operations thereon.

Clause 27

Revocation

(1) The Commission may, by notice in writing to the Company, revoke this Concession in the following circumstances but not otherwise:

(a) the Company fails to commence operations within eight months as required by Clause 4 or fails to meet its expenditure obligations within each of two consecutive periods specified in Article 11 (1) *(a)* and *(b)* of the Law; or

(b) any surface rents or royalties payable under this Concession are in arrears for six months after the date on which they ought to have been paid in accordance with Clause 6 and Clause 7; or

(c) the Company goes into liquidation except voluntarily for the purpose of reconstruction or amalgamation, or a receiver is appointed; or

(d) the Company fails to perform its obligations under Clause 2 or Clause 25; or

(e) any sum awarded against the Company in arbitration proceedings under the following clause has not been paid within 90 days of the date stipulated in the award;

Provided that the Commission shall give to the Company previous notice in writing of the breach and require the Company to remedy the breach and pay compensation where appropriate within the period fixed by the Commission which shall not be less than 90 days; notice of revocation shall only be given if the Company has failed within the specified period to remedy the breach and pay compensation where appropriate.

(2) Whenever the Company disputes the grounds upon which revocation may

be based and requests arbitration under Clause 28 hereof, the revocation shall only become effective subject to and in accordance with the result of the arbitration.

(3) Revocation shall be without prejudice to any liability incurred by the Company before revocation.

Clause 28

Arbitration

(1) Any dispute between the parties arising out of or in connection with this Concession, unless otherwise resolved, shall be settled by arbitration proceedings between the Commission as one party and the Company as the other party and such proceedings shall determine the measures to be taken by the parties including, if appropriate, payment of compensation, to put an end to or remedy the damage caused by any breach of this Concession.

(2) The institution of proceedings shall take place upon the receipt by one party from the other of a written request for arbitration. Each party shall within 30 days of the institution of proceedings appoint an arbitrator. If the arbitrators fail to settle the dispute they shall appoint an umpire within 60 days of the institution of proceedings. If they do not do so either party may request the President, or, if the President is a national of Libya or of the country in which the Company was originally registered, the Vice-President of the International Court of Justice, to make the appointment.

(3) If either of the parties within 60 days of the institution of proceedings either fails to appoint its arbitrator or does not advise the other party of the appointment made by it, the other party may request the President or, if the President is a national of Libya or of the country in which the Company was originally registered, the Vice-President of the International Court of Justice to appoint a sole arbitrator who shall hear and settle the dispute alone.

(4) The umpire, however appointed, or the sole arbitrator shall not be either a national of Libya or of the country in which the Company was originally registered; nor shall he be or have been in the employ of any party to this Concession or of the Government of the aforesaid country.

(5) Should the International Court of Justice be replaced by or its functions be substantially transferred to any new international tribunal, the functions of the President or Vice-President (as the case may be) of the International Court of Justice exercisable under this Concession shall be exercisable by the President or Vice-President (as the case may be) of the new international tribunal without further agreement between the parties hereto.

(6) The procedure or arbitration shall be determined by the umpire or the sole arbitrator who shall be guided generally by the relevant rules of procedure established by Articles 32-69 inclusive of the Rules of the International Court of Justice of 6 May 1946. The umpire or sole arbitrator shall likewise fix the place and time of the arbitration.

(7) This Concession shall be governed by and interpreted in accordance with the Laws of Libya and such principles and rules of international law as may be relevant, and the umpire or sole arbitrator shall base his award upon those laws, principles and rules.

(8) There shall be no appeal against the award and the parties to this Concession shall faithfully abide thereby.

(9) The expenses of the arbitration shall be borne by the parties in such proportion and manner as may be provided in the award.

Clause 29

Interpretation

(1) Words defined in the text of the Petroleum Law 1955 shall have the same meaning in this Concession.

(2) In this concession:

"the Law" means the Petroleum Law of 1955;

"the Director" means the Director of Petroleum Affairs;

"land" means territory under the control and jurisdiction of the United Kingdom of Libya and includes marshes, ground underlying lakes or rivers and the sea-bed and subsoil beneath territorial waters and the high seas contiguous thereto;

"concession area" means the area over which for the time being the Company enjoys the rights conferred upon it hereunder;

"crude oil" means any unrefined oil consisting primarily of hydrocarbons;

"natural gasoline" means any liquid hydrocarbon obtained from natural gas by any chemical or physical process;

"natural gas" means any subsoil gas consisting primarily of hydrocarbons;

"quarter" means a three-month period of a year beginning on 1 January, 1 April, 1 July or 1 October as the case may be.

Clause 30

Fees

This Concession is granted on payment of a fee of £L500.

(Signed) . . . .

For the Commission

(Signed) . . . .

The Minister

(Signed) . . . .

For the Company

Company's Seal

Date . . . .
Corresponding to . . . .

ROYAL DECREE

AMENDING THE PETROLEUM LAW OF 1955

Having seen Article 64 of the Constitution,
Article 25 of the Petroleum Law 1955, and
Acting on what has been submitted to us by the Minister of National Economy and with the approval of the Council of Ministers,
We, Idris the First, King of the United Kingdom of Libya,
Decree as follows:

Article 1

The first paragraph of Article 25 of the Petroleum Law of 1955 is hereby amended to read as follows:

"(1) This Law may be cited as the Petroleum Law 1955 and shall come into force 30 days after publication in the Official Gazette with the exception of Articles 2 and 24 which shall come into force on publication."

Article 2

The Minister of National Economy shall carry out this Decree which shall take effect on publication.

IDRIS.

Given at Dar-Assalaam Palace on 29th Ramadan 1374 h.
Corresponding to 21st May 1955, g.

By Order of the King

Salem AL-QADI,
Minister of National Economy.

Abdul MAJID KU'BAR
For the Prime Minister.

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Annex 33

LIBYAN PETROLEUM REGULATION No. 1 OF 1955 AND MAP No. 1

[Arabic text not reproduced]

(Translation)

PETROLEUM REGULATION No. 1

The Minister of National Economy,
Having seen Article 24 of the Petroleum Law No. 25 of 1955,
And acting on what has been submitted to him by the Petroleum Commission,
Promulgates the following regulation:

PART I

Article 1

There shall be an official map of Libya for the purposes of the Petroleum Law 1955 to a scale of 1:2,000,000, called Map No. 1, which is attached as the first Schedule hereto. On this map the international frontiers, petroleum zones and the grid shall be indicated.

Article 2

For all purposes of the Petroleum Law 1955 and the Regulations issued thereunder the Petroleum Zones shall be as follows:

The First Zone consists of the Province of Tripolitania bounded on the north by the limits of territorial waters and high seas contiguous thereto under the control and jurisdiction of the United Kingdom of Libya, and on the east by 18° 50′ longitude until it intersects the coast line, thence in a straight line in a south-easterly direction to the point where 30° latitude intersects 19° 5′ longitude thence in a straight line running in a south-westerly direction to the point where 10° 30′ longitude intersects 20° 40′ latitude, thence directly south along 18° 30′ longitude to the intersection with 28° latitude, thence in a westerly direction along the 28° latitude to the intersection with 12° 15′ longitude thence directly north along 12° 15′ longitude to the intersection with 31° latitude, directly west along 31° latitude to the border of Tunisia, thence in a general northerly direction along the international boundary with Tunisia.

The Second Zone consists of that part of Cyrenaica north of 28° latitude, bounded on the west by the eastern boundary of Zone 1 described above, on the north by the limits of the territorial waters and high seas under the control and jurisdiction of the United Kingdom of Libya, and on the east by the international boundary with Egypt.

The Third Zone consists of the part of Cyrenaica south of 28° latitude bounded on the west by 18° 30′ longitude, on the east by the international boundary with Egypt and the Sudan.

The Fourth Zone consists of the Province of the Fezzan bounded on the north by the southern border of the First Zone described above bounded on the west by the international boundary with Algeria and Tunisia, on the south by the international boundary with French East Africa and French Equatorial Africa and on the east by 18° 30′ longitude, which is the western boundary of the Third Zone.

Article 3

The grid to be used in conjunction with the official map shall consist of longitude and latitude lines five minutes apart commencing from any full degree.

Article 4

Boundaries of concessions shall conform as far as possible to the grid lines specified above with the following exceptions:

(a) Where they follow the limits of the territorial waters and high seas contiguous thereto under the control and jurisdiction of the United Kingdom of Libya.
(b) Where they follow the coast line of Libya.
(c) Where they follow the boundaries of the Petroleum Zones.
(d) Where they follow the international frontiers.

Article 5

(a) Concession areas applied for shall be compact and free from narrow indentations, except in exceptional cases as the Commission may deem fit. An applicant shall not be permitted to unify distinct concession areas by connecting them with an insubstantial link. The Commission may require any applicant who fails to comply with the provisions of this paragraph to amend his application.

(b) The greatest length of a concession shall not exceed six times its weighted mean average width. However the Commission may permit a deviation from the aforementioned ratio of width to length where it deems it necessary. In determining the above ratio contiguous and adjoining concessions shall be considered as a unit, notwithstanding that they may cross zonal boundaries.

(c) The above provisions shall not apply if the Commission deems it necessary for the settlement of overlaps.

Article 6

For all purposes of the Petroleum Law 1955 and the Regulations issued thereunder the area of each 5 × 5 block of the grid shall be deemed to be as set out hereunder:

Each 5′ × 5′ block

between 33°-34° of latitude 71.57 sq. kilometres
between 32°-33° of latitude 72.37 sq. kilometres
between 31°-32° of latitude 73.15 sq. kilometres
between 30°-31° of latitude 73.91 sq. kilometres
between 29°-30° of latitude 74.64 sq. kilometres
between 28°-29° of latitude 75.35 sq. kilometres
between 27°-28° of latitude 76.04 sq. kilometres
between 26°-27° of latitude 76.70 sq. kilometres

between 25°-26° of latitude 77.34 sq. kilometres
between 24°-25° of latitude 77.96 sq. kilometres
between 23°-24° of latitude 78.56 sq. kilometres
between 22°-23° of latitude 79.13 sq. kilometres
between 21°-22° of latitude 79.67 sq. kilometres
between 20°-21° of latitude 80.20 sq. kilometres
between 19°-20° of latitude 80.70 sq. kilometres

PART II

I. APPLICATION FOR PERMITS AND CONCESSIONS

Article 7

(1) Applications for permits and concessions shall be submitted in triplicate in the form prescribed in the second and third schedules to this Regulation. Such applications shall be handed or sent by registered mail to the Director. Any applicant wishing to receive an authenticated copy in accordance with the provision of Article 10 *(d)* hereof shall submit a further copy for that purpose.

(2) Applications shall be submitted during the official hours of the Director, namely, between 9.00 am and 12.00 noon each day of the week except official public holidays. The Director shall not receive any application submitted during other hours except applications for concessions submitted in accordance with Article 8 (1) *(a)* of the Law in which case the Director shall receive applications submitted up to midnight of the seventh day following the coming into force of the Law.

(3) The expression "on the same day" Article 8 (1) *(b)* of the Law means during the official office hours of the Director.

Article 8

The Commission shall take all steps necessary to ensure that all applications for permits and concessions and all plans, sketches, reports and other documents accompanying such applications are treated as confidential.

Article 9

Every applicant for a permit or concession shall, on the submission of the application, notify the Commission of the name, residence and Post Office address of the person resident in Libya authorized to act for and on behalf of the applicant (hereinafter called "the Local Manager"). The applicant shall provide the Commission with the necessary officially authenticated power of attorney of the Local Manager.

Article 10

On the receipt by the Director of an application for a permit or concession he shall forthwith:

(a) give to the application an exclusive reference number;
(b) register in the Petroleum Register particulars in accordance with Article 11 of this Regulation. Every valid application to be registered shall be deemed to be registered when it is received by the Director, provided however that no application shall be made public on the day on which it was received, or,

in the case of applications coming under the provisions of Article 8 (1) *(a)* of the Law, within the period specified therein;

(c) file all such applications and any sketch, plan or other document accompanying them in the records of his office;

(d) where requested under the provisions of Article 7 (1) hereof, return to the applicant a copy of the application and of the documents accompanying it, duly authenticated by the Director as true copies of the original application and of the other documents received by the Director;

(e) issue to the applicant an official receipt showing the nature of the documents received, the reference number in the Petroleum Register, the reference number given to them by the applicant and the exact time and date of receipt.

Article 11

The Director shall keep a Petroleum Register signed by the Minister and the Chairman of the Commission, and bearing the seals of the Ministry and the Commission on each page, and such other registers as may be directed by the Commission for the registration of applications for, and the grant, assignment, renewal, surrender, termination and revocation of permits and concessions and other particulars relating thereto and especially:

(a) the dates of the application for, and of the grant, assignment, renewal, surrender, termination and revocation of the permit or concession;

(b) the name and address of the applicant and the name, residence and Post Office address of the Local Manager in Libya;

(c) the areas applied for, granted and surrendered;

(d) all reference numbers relevant to such particulars.

Article 12

(1) The Commission shall issue such maps, plans and sketches as may be necessary.

(2) The Director shall maintain status maps in respect of each Petroleum Zone showing the areas included in all pending applications, the areas of all currently valid concessions and all open areas.

Article 13

The Petroleum Register and the status maps shall, during the official hours of the Director, be open to the public and certified copies may be made of them on payment of a reasonable fee to be determined by regulation.

II. CONSIDERATION OF APPLICATIONS

Article 14

The Director shall immediately submit to the Chairman of the Commission an original copy of each application submitted to him.

Article 15

(1) If it appears to the Commission that an application for a permit or concession contains minor inadvertent errors in form including errors of translation, the Commission shall, if it deems necessary to have the errors corrected,

request the applicant to make such corrections within a reasonable period determined by the Commission without loss of priority.

(2) The Commission shall also permit the correction of similar errors appearing in any plan, sketch, report or document submitted to the Commission.

(3) In other cases the provisions of the Libyan Law will apply.

Article 16

(1) The Commission shall consider valid applications in order of their priority.

(2) The Commission may require an applicant to submit additional information relevant to his application and shall allow such applicant a reasonable period within which to submit such information without loss of priority.

(3) The Commission shall initially determine the eligibility of the applicant in accordance with Article 5 of the Law.

The decision of the Commission regarding the eligibility or ineligibility of an applicant shall not be binding on the Commission in respect of future applications by the same applicant.

Article 17

(1) If the application does not conflict in whole or in part with other applications of equal priority and the Commission decides to grant the application, such application and the decision of the Commission shall be referred to the Minister.

(2) If the application conflicts in whole or in part with other applications of equal priority the Commission shall apply the provisions of Article 8 (2) of the Law. The Commission shall, in consultation with conflicting applicants determine the necessary periods for the implementation of the said paragraph. At the conclusion and in the light of this procedure the applications and decisions of the Commission shall be referred to the Minister and the applicants shall be notified of the decisions of the Commission.

(3) Where necessary in the settlement of conflicting applications the areas covered by any one concession need not be contiguous.

(4) If the Commission decides to refuse any application for a permit or concession, the applicant shall be informed accordingly, and the application, together with the decision of the Commission, shall be referred to the Minister.

Article 18

(1) If the Minister approves any decision of the Commission regarding the grant or refusal of any application, the Commission shall forthwith inform the applicant accordingly and take such other action as may be required to implement the decision of the Minister.

(2) If the Minister does not approve any decision of the Commission regarding the grant or refusal of any application, the Commission shall reconsider its decision in the light of the observations of the Minister, and shall refer its decision back to the Minister.

(3) No permit or concession may be granted except with the approval of both the Commission and the Minister.

Article 19

An applicant who is notified of the final acceptance of his application shall:

(1) pay the prescribed fee;

(2) in the case of the grant of a concession, give the bond or banker's guarantee in the sum determined by the Commission in accordance with paragraph 3 of Article 9 of the Law. The bond or guarantee shall be in triplicate, each copy being duly recorded in the Registers of the Commission, one of which shall be kept by the Commission and the other two shall be returned to the applicant after such recording;

(3) sign an undertaking to abstain from all political activity in Libya.

The above procedure shall be completed within one week from the date of the receipt of the final notification. Payments shall be made to the Treasury of the Federal Government in the account of the Petroleum Commission

Article 20

(1) The Commission shall, after ascertaining the completion of the procedure provided for in the previous Article, fix a date for the signature of the permit or concession as the case may be.

(2) Rents due in respect of any concession shall be paid in the manner prescribed in the previous Article hereof immediately on the grant of such concession.

Article 21

Any person to whom a concession is granted shall, before commencing operations, take all appropriate legal steps to comply with the requirements of the Libyan Commercial Code and such other laws as may be applicable in respect of such operations.

Article 22

(1) In regulations issued under the Petroleum Law No. 25, 1955:

(a) words and phrases defined in the Petroleum Law No. 25, 1955, and the Second Schedule thereto shall have the same meaning in the Regulations issued under the Law;
(b) the coast line means the line of mean low-water spring tide level;
(c) the weighted mean average width is determined by dividing the area by its greatest dimension.

(2) The Director may, with the approval of the Chairman of the Commission, delegate to any official of the Commission any of the functions conferred on him by the Law, the Schedules thereto and the Regulations issued thereunder.

Article 23

This Regulation shall come into force on the date of the coming into force of the Petroleum Law No. 25, 1955.

Promulgated on 6th Thul Qi'da 1374, h.
Corresponding to 16th June 1955, g.

Salem AL-QADI,
Minister of National Economy.

Annex 34

MALTESE NOTE VERBALE DATED 5 MAY 1965

The Government of Malta presents its compliments to the Government of Libya and has the honour to advise that in virtue of an Exchange of Letters bearing the date of the 12th December, 1964, between the Government of Malta and the Government of the United Kingdom, Malta has assumed all the rights and obligations deriving from valid international instruments which had been made applicable to Malta prior to her independence.

The Ministry further advises that the United Nations Convention on the Continental Shelf, 1958, is one of such instruments and that it is the intention of the Government of Malta to declare to the Secretary-General of the United Nations the direct accession of Malta to the Convention.

The Ministry informs that in determining the boundary of the continental shelf appertaining to Malta, the Government of Malta has been guided by the provisions of Article 6 (1) of the Convention, which establish the boundary as the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of Malta and of other countries adjacent to the same continental shelf are measured. The Government of Malta will be grateful to know that the Government of Libya is in full accord with this determination.

The Government of Malta avails itself of this opportunity to renew to the Government of Libya the assurances of its highest consideration.

Valletta, Malta,
5 May, 1965.

Annex 35

MALTESE CONTINENTAL SHELF (DESIGNATION OF AREA) ORDER, 1971

CONTINENTAL SHELF ACT, 1966
(ACT NO. XXXV OF 1966)

THE CONTINENTAL SHELF (DESIGNATION OF AREA) ORDER, 1971

Date of commencement: 22nd April, 1971

In exercise of the powers conferred upon him by section 3 of the Continental Shelf Act, 1966, the Prime Minister has made the following order:

1. This Order may be cited as the Continental Shelf (Designation of Area) Order, 1971.

2. The area described in the Schedule hereto is by this Order designated as an area within which the rights mentioned in subsection (1) of section 3 of the Continental Shelf Act, 1966, are exercisable.

SCHEDULE

The area bounded by lines joining the co-ordinates set out hereunder, exclusive of any land and of any territorial waters within those lines. The aforesaid co-ordinates are:

A.	36° 23'8 N, 14° 28'0 E
B.	36° 02'5 N, 15° 19'5 E
C.	35° 36'3 N, 15° 19'5 E
D.	35° 23'6 N, 15° 11'8 E
E.	35° 23'7 N, 14° 50'5 E
F.	35° 41'4 N, 14° 26'9 E
G.	36° 09'8 N, 14° 19'1 E

Annex 36

PETROCONSULTANTS MAPS SHOWING THE MALTESE CONCESSION SITUATION AS OF 31 DECEMBER 1970, 1974, 1975, AND 1976

[Not reproduced]

Annex 37

(a) MINUTES OF A MEETING HELD ON 11 JULY 1972; *(b)* MALTESE MEMORANDUM

(a) MINUTES OF A MEETING HELD ON 11 JULY 1972

Minutes of a Meeting Held at The Auberge de Castille between Officials of the Maltese and Libyan Governments

Present:

Malta Side:

Mr. M. Abela,
Mr. M. Coppini,
Mr. L. Naudi,
Mr. J. Bartolo.

Libyan Side:

Mr. Massaud Abuamer,
Mr. Muftah Abusdere,
Mr. Eljali Lias.

Flight Information Region

The Maltese side led off by explaining that earlier on this year, the Libyan Director of Civil Aviation had expressed his Government's wish of exercising control over the whole of the present Malta FIR. On the 22nd April, the matter was discussed between the Prime Minister and the Libyan President wherein an understanding was reached whereby Malta would control an FIR which would extend to Libya's territorial waters. Discussions were held on the question in Malta on 30th May 1972 when Libyan representatives remarked that they were not aware that an understanding had been reached between the two countries and promised to look into the matter on their return to Libya. As had been agreed during that discussion a letter was sent on 24th June 1972 wherein the arrangements reached on the 22 April 1972 were referred to and seeking the finalization of the agreement between the two countries on the issue. This letter also indicated facilities available for training Libyans.

The Libyan side replied that, purely from an operational point of view, they thought that one FIR in this region would be a more feasible proposition. Libya had already commissioned a group of consultants to help advise and implement its own FIR. As far as the delegation was concerned they would opt for nothing less than a Libyan FIR covering the territory at present operated from Malta with the sole exception of Malta's airspace.

The Maltese side explained that the Government had no wish or intention of preventing Libya from exercising control over its territory. There were however political considerations and on the basis of such considerations, an understanding had been reached at the highest possible level. This understanding envisaged that Malta would continue to have an FIR covering the airspace as far as Libyan territorial waters, with Libya controlling the remaining region.

The Libyan delegation stated that they were not aware that any agreement or understanding existed except on the continued existence of a Malta FIR the size and boundaries of which were yet to be defined. They had in fact instructions from their Government to say that they would only consider an FIR covering all the territory currently being operated by Malta with the exclusion of Malta's TMA. The idea that Malta's FIR should extend to Libya's territorial waters was not acceptable either at technical or at political level, although the proposal of a slightly enlarged Maltese TMA could be the subject of negotiation. A Working Paper based on the assumption of overall control by Libya had been prepared by the Libyan Civil Aviation Authorities and was actually on its way to ICAO in connection with the next ICAO navigation meeting due to be held in Kampala next October. The Libyan delegates added that if the problem from the Maltese point of view was simply that of redundant employees Libya would be only too happy to absorb this labour.

The Maltese side replied that:

(a) the matter had been agreed upon at the highest political level and they could not consider anything which deviated from the understanding reached;
(b) a Malta FIR equivalent to the present Malta TMA or a marginal accretion was a preposterous suggestion even within operational consideration;
(c) even if only the *existence* of a Malta FIR had been agreed upon on 22nd April, the area envisaged by the Malta side was of marginal size and its further reduction would render the whole thing meaningless;
(d) the action by Libya in sending the Working Paper was grossly deplored and was in breach of the understanding reached in *writing* between the two countries to the effect that "agreement between us be reached in the matter before it is taken up in ICAO". The Malta side considered itself free from the restriction imposed by the terms of that understanding.

It was re-confirmed by the Libyan side that:

(a) the proposal that Libya's FIR encompass only Libyan national territory was not acceptable;
(b) they could only propose the Maltese TMA as the FIR for Malta or a slightly enlarged TMA;
(c) their Government had already made approaches to ICAO and a paper on the subject was on its way.

It was agreed that the sides would report on the position to their respective Heads of Delegation.

Median Line

It was known that talks were being held between Tunisia and Libya on the subject. Malta has boundaries on this median line and in the interest of all concerned it was felt that tripartite talks, possibly in Malta, would be a far better proposition than bilateral discussions. It was pointed out that Malta can be of help in this respect through the advice solicited from impartial experts.

The Libyan delegation explained that there is a standing Committee in Libya dealing with the subject. They suggested that an approach be made to this Committee which was headed by Mr. Suleiman Atiaga of the Libyan Ministry of Foreign Affairs.

The Maltese delegation were prepared to sign a bilateral agreement with Libya on the Median Line. The Libyan delegation stated that this was not possible and that they would be sending a delegation to Malta to negotiate the necessary agreement. The Malta Side agreed to make available the co-ordinates of the Median Line.

External Telecommunications

The Maltese delegation asked for further information on the projected Libya, Syria, Europe telecommunication link. The Maltese Prime Minister had discussed the matter with the Libyan President and the latter had answered him that the necessary decisions were taken to extend the link to Malta. The Libyan delegation stated that they were not briefed on the matter.

The Maltese delegation also stated that they understand that France was planning for a telecommunication link joining Marseille/Malta/Tripoli/Tunis and enquired whether Libya is interested in the project.

Notes on Flight Information Centre

1. The Maltese Government have insisted with the British Government that they should co-operate with the Government of the Libyan Arab Republic for the establishement of a Libyan FIR. The British Government have finally accepted this position but they would only pay under the new agreement if the Libyan FIR did not extend beyond the Libyan territorial jurisdiction and the Tripoli and Benghazi Terminal Control Areas.

2. The Malta Flight Information Centre is under the control of the Maltese Government and physically operated by Maltese nationals. There are only three foreigners having responsibilities in the Centre. They are British citizens under contract with the Maltese Government and steps are being taken to replace them by Maltese nationals in the near future.

3. The Maltese Government are quite prepared to co-operate with the Government of the Libyan Arab Republic in those matters which the latter Government feel important for the security of their country, including the exchange of necessary information and the placement of Libyan nationals for training in the Centre.

4. The transfer of the FIC from Luqa to Tripoli (or any other place in Libya) would in no way give to the authorities of the Libyan Arab Republic control over military aircraft flying over international waters, i.e., over the whole of the area which the Maltese Government wishes to retain. In fact:

(a) Military aircraft are not subject to ICAO regulations and only observe them if they so wish. They of course take note of them and act accordingly —such as by avoiding the airways or by flying at certain heights for their own safety and for the safety of other aircraft.

(b) Military aircraft movements within the FIR become known to the Centre as such only when—

  (i) a flight plan is filed and sent to the Control;
  (ii) the aircraft originates contact with the Centre on normal communications frequencies or replies to contact made by the Centre;
  (iii) the presence of the aircraft is reported by other aircraft, normally civil, flying in the area (e.g., in the case of an air miss).

5. For these and similar reasons, the transfer of the FIC from Luqa would not give substantially any more information to the Libyan authorities about military aircraft over international waters. For such information any country must rely on other detecting means—such as the radar system. Moreover, all

contacts with an FIC, wherever located, are made on established frequencies and are therefore audible by anybody in the area. There is nothing secret about them.

11th July 1972.

(b) MALTESE MEMORANDUM

Memorandum to the Libyan Delegation

1. The Maltese Government submits for the consideration of the Libyan Government the following proposals aimed at consolidating and extending the political, economical and commercial relations existing between Malta and Libya.

Contracts

2. It has been noted that Malta has submitted a number of tenders which for some reason or other have not been accepted. These include tenders for printing work as well as the construction of mobile units of a floating dock and of floating cranes.

3. The Libyan Government is doubtlessly aware that Malta can only achieve economic growth if it can find markets for its output. Malta is still in its initial stages of development and it must be helped to achieve this necessary expansion of exports. The Maltese authorities accept that Libya cannot but award contracts to the most competitive tenderers. Malta is making an effort to submit competitive bids, however, it will be appreciated if in future before certain tenders are awarded, the Libyan authorities would give the Maltese Drydocks or any other Maltese parastatal contractor the opportunity to execute the order at the price of the most advantageous offer. There might also be other occasions of certain urgent contracts where the Libyan authorities could consider the advisability of negotiating the price with such Maltese contractors. Such negotiations might include cost plus, profit-sharing, no profit on bought-out items or some similar formula acceptable to both parties. In this way Maltese exports will be in a position to increase without any detriment to Libya.

4. We are aware that Libya plans to have its own docking facilities within 18 months time. The Malta Drydocks Corporation is prepared to collaborate with the Libyan Government on the running of its ship repairing facilities, both existing and projected for the future, and to provide for training as set out in paragraph 15. The question of contracting work for the Maltese construction industry in Libya has been the subject of previous talks. Following a fact-finding visit to Libya by Maltese contractors, a Maltese Company has been formed with the participation of about 50 Maltese contracting firms, the Malta Development Corporation and the National Bank of Malta. The required capital of £D250,000 has been pledged in full by the various shareholders and 20 per cent has been paid up. The shareholders of the Company have between them executed works in Malta for a total value in excess of £50 million. The Libyan Ministry of Housing and Public Utilities has promised its support to the extent of waiving certain conditions required for the registration of international contractors.

5. To enable the Company to start functioning effectively it is necessary for the Libyan Government to grant the following facilities:

(i) recognition of the Malta International Construction Company Limited as an "international contractor" by the Ministry of Housing and Public Utilities;

(ii) double taxation relief, in a form to be negotiated between our two Governments, applicable both to the Company and to the workers assigned to work in Libya; and,

(iii) easing of the Exchange Control Regulations in Libya in respect of financial transactions required by both Company and workers.

Joint Ventures

6. It has been the thesis of the Malta Government in earlier discussions that Malta's economic development should, as far as possible, be complementary to Libyan development. Cut-throat competition can only be of detriment to the two countries. Malta therefore is striving to achieve an industrial structure which takes advantage of the Libyan market without setting up competing processes.

7. The Malta Development Corporation has already studied the feasibility of producing in Malta water and electricity meters, telephone instrument sets and centrifugal water pumps. It is known that a market exists in Libya for these products. The Maltese Government suggests that Libyan capital should participate in these ventures and as a consequence the Libyan authorities could find it worthwhile to allocate a share of the Libyan market to such ventures.

8. The Maltese Government would be grateful to have information on the likely future demand for these products by Libya. In addition it will be appreciated if Malta could be informed whether Libya is prepared to participate in joint ventures of this nature.

Trade

9. Trade between Malta and Libya has shown encouraging signs of expansion. It is the Maltese Government's contention that more can be done to further trade between the two countries. The Libyan authorities can help in this by sponsoring visits of Libyan trade delegations to visit Malta at regular intervals with the aim of buying Maltese products. It was gratifying to note that the recent visit by members of the Libyan Chamber of Commerce resulted in orders being left with Maltese manufacturers.

10. The Maltese authorities would reiterate their desire to have an outlet in Libya for their excess flour milling capacity. Contacts have been made with the Ministry of National Economy and the National Supply Company and samples have been forwarded. It appears that the Libyan authorities are still not satisfied with the samples received and more samples are being forwarded. It would be useful to the local millers if the pertinent Libyan authority were to make available to the Malta Development Corporation a sample of the flour currently in use in Libya to enable Maltese millers to comply with the necessary specifications.

Tourism

11. It is noted that there has not been any substantial improvement of Libyan tourists visiting Malta. The Libyan Government is doubtlessly aware that recent political events resulted in a bad British press which in turn affected the Maltese tourist trade adversely. Malta requires the immediate support of friendly neigh-

bouring States to fill its hotels. For this purpose the Maltese Government requests Libya to allow Maltese tour operators to organize all inclusive tours to enable Libyan nationals to spend their holidays in Malta.

12. It is the understanding of the Maltese Government that there are still some travelling restrictions for Libyan nationals. The Maltese Government would appreciate a relaxation of these restrictions in respect of Libyans wishing to spend their holidays in Malta. On the other hand Malta is prepared to examine ways and means of co-operating with the Libyan authorities in connection with security measures.

13. Malta is also currently negotiating with the Tunisian authorities the establishment of a ferry service between the two countries. The Maltese Government will be grateful to know whether Libya is interested in a joint venture to enable the ferry service to link Tunis, Tripoli and Malta.

14. The Maltese Government also notes that plans and feasibility studies for the building of a hotel in Malta, catering mainly for Libyan tastes, have been submitted to the pertinent Libyan authorities some months back. It is undertood that if the necessary exchange control permission was forthcoming Libyan entrepreneurs would be prepared to set up a joint venture with a Maltese hotel operator.

Training

15. The Maltese Government is prepared to offer the following training facilities:

(a) attachment with the Malta Drydocks Corporation for training Libyan personnel in ship repairing, engineering, electrical and other industrial skills up to recognized trade levels;

(b) attachment of Libyan personnel to the Malta Flight Information Centre for training of controllers and HF/RD communicators on the basis of one man per watch for three months. Over a nine-month period 12 controllers and 12 communicators can be trained; and

(c) training in the various management and technical skills required to run a television studio in a "Television School" which is being set up in Malta by the Frederick Ebert Foundation.

Malta can also:

(a) provide services, including trained man-power, to run, maintain and service power stations, sub-stations, pumping stations, oil installations and other similar industrial units in Libya; and

(b) send technical experts to Libya to train Libyan personnel in the use of a printing press. Until such time as the Libyan personnel are fully trained contracts can be executed by St Paul's Press which is owned by the Government through the Malta Development Corporation. In the long run it will be important for Malta and Libya to come to an understanding whereby contracts in the Arab language are printed in Libya whilst contracts in European languages are printed in Malta. In this way fruitful co-operation can be established.

Labour Conditions of Maltese Working in Libya

16. Following discussions between the Maltese and the Libyan delegation in Tripoli last March and the expected movement of Maltese workers in Libya it is being proposed that a Labour Agreement be signed by the two countries. Such agreement would incorporate among other things provisions regarding Social

Security and Double Taxation Relief. It would also follow broadly the same lines of a similar agreement entered into between Libya and Tunisia. Regarding *Social Security* it is proposed that a Special Insurance Fund for Maltese workers be set up by the Libyan authorities and Maltese workers and their employers would be required to pay into this Fund contributions at the same rates payable under the Libyan Law.

17. The Libyan authorities would pay out of this Fund:

(a) Sickness Benefit;

(b) Injury Benefit; and

(c) for Medical Care both in the event or ordinary sickness as well as injury arising out of an occupational accident.

18. The Libyan authorities would inform Malta either regarding individual cases or of the state of the Fund as a whole periodically. Any surplus would be sent to Malta and any deficit would be made good by Malta.

19. The possibility may also be considered of entering into a Reciprocity Agreement on the pattern of International Agreements of this nature.

20. Regarding *Double Taxation* it is proposed that a Double Taxation Relief Agreement be negotiated between Libya and Malta.

21. This could take the form of similar recognized International Agreements or a clause could be inserted in the proposed Labour Agreement with the aim that the two Governments would give Double Taxation Relief to each other's nationals that is, each country would undertake to exempt from Income Tax any income accruing to Nationals of the other country from sources within the former country.

22. In the case of Malta this could be achieved by the use of the Minister's powers under Subsection 2 of Section 8 of the Malta Income Tax Act.

Sponsoring of Projects

23. The Maltese Government is still short of funds and requires assistance to enable it to implement those infrastructural projects considered to be important for Malta's development. For this purpose the Maltese Government requests a soft loan on the pattern of the loan recently negotiated with China. Such a loan would be an interest-free loan with a moratorium for ten years and subsequently repayable by equal instalments over a further period of ten years with commodity exports to Libya. Some of the projects which Libya might wish to sponsor are the following:

(a) *irrigation*

24. The Maltese farmer is at a big disadvantage due to the fact that only 5 per cent of agricultural land is irrigated. Facilities for water storage and irrigation equipment are costly and beyond the means of the average Maltese farmer. The Government is therefore embarking on a project to provide irrigation to a larger number of farms. Projects awaiting implementation include the construction of reservoirs to collect run-off water during the storm period (September/October) and the construction of water towers into which water from existing large wells can be pumped and subsequently used for irrigation.

(b) *Civil abbatoir*

25. The Government has been postponing the building of a new civil abbatoir due to lack of funds. The present abbatoir is old, lacks equipment and is totally unhygienic. Plans have been drawn up by international consultants and the Government has asked a Dutch expert to check the plans and suggest economies. This Scheme is worth £1 million.

(c) *National airline*

26. Plans are far advanced to set up a Maltese National Airline. Only thus can Government ensure that Malta will be adequately linked by air to various tourist centres. The Government looks upon such an airline not as an instrument of profit but as a means of expanding its tourist traffic and air freight. The new airline must have at its disposal modern jet aeroplanes comparable to the carriers which BEA and Alitalia are operating at the moment (Tridents, Caravelles and DC 9). The initial capital for this airline is estimated to be about £1 million.

(d) *Belt is-Sebh*

27. The Maltese Government is building a new administrative town in Floriana known as "Belt is-Sebh". The complex will include the construction of Government offices, entertainment facilities and a super-market. The site requires land-scaping, roads, and the construction of water reservoirs. This project is anticipated to cost about £1 million.

28. It is the Malta Government's intention that a plot be reserved to enable the Libyan Government to construct its Embassy in this new administrative town.

(e) *Telecommunications*

29. It is known that Libya is planning to lay a telecommunications cable to Syria and Europe. During the course of high level discussions held in Libya it was agreed that this cable be extended to Malta through Sicily. It will be appreciated if the Libyan delegation can indicate their plans. The Italian authorities have already been approached and have agreed to this arrangement. It is also understood that arrangements are being made to lay a Submarine Cable between Tripoli and Marseilles. If the Libyan authorities could confirm this it would be appreciated if they furnish more information to the Maltese Government with a view to considering the possibility of making such a submarine link via Malta.

(f) *Malta flight information region*

30. Under the air navigation plan for the African-Indian Ocean region of ICAO set up under the Chicago Convention, 1944, Malta is responsible for the Flight Information Centre based on the Island. This centre provides air traffic control, meteorological information and other services in an area which is defined to include the territory and territorial waters of the Libyan Arab Republic.

31. The Government of the Libyan Arab Republic has decided to assume responsibility for the provision of air traffic services in the air space above the territorial limits of the Libyan Arab Republic and furthermore expressed the opinion that it would be expedient for the Libyan FIR to encompass the whole of the present Malta FIR.

32. The Maltese Government does not agree with this view and holds that the Libyan FIR should only encompass Libyan sovereign territory. This matter was discussed at a high level meeting which took place in Tripoli on the 22nd April 1972 at which Malta's contention was accepted.

33. In spite of this decision the Libyan Civil Aviation authorities are still contending that the Libyan FIR should encompass the whole of the present Malta FIR and the matter was discussed with the Administrative Secretary in Malta on the 10th May 1972.

34. It is important for Malta that Libyan Civil Aviation authorities enter into an agreement which honours the decisions which were taken in Tripoli at the meeting of the 22nd April.

(g) *Median line*

35. The Maltese Government is aware that discussions are in progress between Tunisia and Libya to establish a median line. Malta has an interest in this and wishes to participate in these discussions so that talks can be concluded on a tripartite basis.

36. Malta has already obtained expert assistance and median lines have been drawn in accordance with Article 6 of the UN Conference on the Law of the Sea, Convention on the Continental Shelf and Contiguous Zones of April 1958 (Art. 12) and the Convention on the Continental Shelf of the same month (Art. 6). This work may be of assistance to both the Libyan and Tunisian Governments. The Maltese Government suggests that discussions on the median line be held in Malta.

(h) *Agriculture*

37. The Maltese Government appreciates the gesture made by the Libyan Government in donating citrus trees to Malta. It is to be pointed out that the needs of Malta in the sector of tree planting are such that any future donations which the Libyan authorities may be in a position to make would be gratefully accepted.

38. It is noted that both Malta and Libya are paying high prices for cereals destined for animal fodder. It is understood that Libya has the necessary land and the necessary agricultural machinery and equipment. Libya is therefore in a position to alienate some land to this type of cereal production. It is suggested that Malta could supply the necessary labour for growing such cereals in Libya. Arrangements can be made for the produce to be shared between the two countries on an equitable basis. If this Scheme commends itself to the Libyan Government feasibility studies can be drawn up.

39. It is the aim of the Maltese Government to become as independent as possible of the international market of refined sugar. To this end the Libyan authorities are invited to study together with the Malta Development Corporation the possibility of setting up in Malta a sugar refinery as a joint venture to cater for the needs of both countries.

Annex 38

MALTESE DRAFT AGREEMENT SUBMITTED ON 12 JULY 1972

[See Memorial of Malta, Annex 4, infra*]*

Annex 39

LIBYAN DRAFT AGREEMENT SUBMITTED ON 23 APRIL 1973

[Arabic text not reproduced]

DRAFT

Agreement between the Government of the Libyan Arab Republic and the Government of Malta relating to the delimitation of the continental shelf between the two countries.

The Government of the Libyan Arab Republic and the Government of Malta; consolidating the existing relations of their sincere friendship and realising the goals of their active role in the Mediterranean sea, starting with the aims and the customary rules of the international law concerning the establishment of sea boundary between the respective parts of their continental shelf,

Have agreed as follows:

Article (1)

(a) The dividing line between the parts of the continental shelf which appertains to the Libyan Arab Republic and that appertains to Malta shall be defined by the great circles joining the points which their co-ordinates are given below:

Point No.	*Latitude*	*Longitude*
(1) I	35 40 0	13 49 5
(2) II	35 35 6	13 55 5
(3) III	35 33 8	14 00 5
(4) IV	35 34 5	14 10 0
(5) V	35 32 5	14 12 4
(6) VI	35 25 5	14 17 8
(7) VII	35 23 0	14 25 0
(8) VIII	35 20 5	14 30 0
(9) IX	35 25 5	14 39 5
(10) X	35 23 5	14 46 0
(11) XI	35 26 8	14 53 8
(12) XII	35 32 8	14 53 5

(b) The dividing line has been drawn on the chart annexed to this agreement.

Article (2)

Subsequent changes in the conformation or charting of the coastline or baselines of Malta or the Libyan Arab Republic due to natural or other causes shall not alter the dividing line.

Article (3)

In case that a single petroleum field extends across the boundary of the dividing line, then the contracting parties shall consult with a view to reaching agreement upon a plan for the exploitation of the field in question.

Article (4)

Should any dispute arise concerning the position of any installation or other device in relation to the dividing line, the contracting parties shall in consultation determine on which side the installation or other device is situated.

Article (5)

This agreement shall become effective on the date of exchange of instruments of ratification.

Done at in two original copies in Arabic and English languages, both copies being equally Authentic.

For the Government of the Libyan Arab Republic	For the Government of Malta

Annex 40

DRAFT MALTESE MINUTES OF A MEETING HELD ON 23 AND 24 APRIL 1973

Confidential

MINUTES OF THE MEETING HELD 23RD AND 24TH APRIL 1973, AT THE MINISTRY OF COMMONWEALTH AND FOREIGN AFFAIRS, VALLETTA

DELIMITATION OF THE DIVIDING LINE BETWEEN MALTA AND THE LIBYAN ARAB REPUBLIC

Libyan Delegation:

Mr. Muftah Mohammed Unis, Ministry of Planning,
Mr. Ahmed Khalil Garta, Ministry of Housing,
Mr. Nuri Mustafa El Gritli, Ministry of Petroleum,
Mr. Abdellah Ahmed Kharbach, Ministry of Foreign Affairs,
Mr. Mohammed Hmeda Matri, Ministry of Foreign Affairs.

Maltese Delegation:

Mr. M. Abela, Secretary, MOFA,
Mr. T. A. D. N. Hillyerd, UN Adviser,
Mr. C. Twardovski, UN Adviser,
Mr. L. Dedone, Assistant Secretary, Ministry of Development,
Mr. H. F. Naudi, MOFA.

The Libyan Arab delegation submitted a draft agreement in five articles in which the co-ordinates of the dividing line between Malta and the Libyan Arab Republic were given.

The Libyan Arab Republic delegation stated that in determining the dividing line, the respective length of the portion of the coastline of the LAR which is facing Malta had only been taken into consideration.

This portion of LA shore line was defined as extending from the Tunisian border to east of Misrata. The distances between the two coastlines (Malta and LAR) was divided in the same proportion that the two shorelines bear to each other.

In justifying this method the LAR delegation stated:

(1) The equidistance principle is not equitable in this case, at the same time it is not the only method applicable.
(2) The equidistance principle was found not to be fair in the North Sea case and Fernando Poo Island therefore it was not applied.

In replying to the example stated by the Maltese delegation concerning the determination of the dividing line by the equidistance method between the Island of Malta and Sicily the Libyan delegation stated that in this specific case both methods will give almost the same results, because of the fact that the portion of the coastline of Sicily Island is nearly equal to the length of the Maltese coast facing Sicily.

Article 6 of the Geneva Convention of 1958 emphasized that the boundary of the continental shelf appertaining to States shall be determined by agreement between them, and in the absence of agreement and unless another boundary is justified by special circumstances the boundary is the median line. This makes it very clear that the equidistance principle is only one method to determine the dividing line and it is not obligatory to any State.

The Maltese delegation stated that the principles enunciated by the Libyan Arab delegation are new ones which have no international precedents. The case of Germany was one of adjacent States and therefore not comparable to the situation of Malta and Libya which are two States facing each other. Fernando Poo, like the Italian islands of Linosa and Lampedusa, are island dependencies of metropolitan areas situated on the continental shelf of another State. Malta is an island State and can claim the same breadth of maritime jurisdiction as coastal States situated on the mainland of a continent. The equidistance principle has been adopted in the North Sea for the drawing-up of the median line between Britain and Norway. In the Mediterranean between Italy and Malta, in the Arabian Gulf between Bahrain and Saudi Arabia. Indeed, in similar situations the principle of equidistance has always prevailed. It was pointed out to the Libyan Arab delegation that the equidistance principle gave a much larger acreage to the State with the longer coastline than to the State with the shorter one.

This principle ensures an equitable distribution of the continental shelf.

The Maltese delegation stated that they could not accept the principles enunciated by the Libyan Arab delegation that their position had been made clear in the minutes and draft agreement submitted to the Libyan side in July 1972, and they could only usefully discuss the issue on that basis. The Maltese delegation further stated that the equidistance principle was founded on legal international practice. The Libyan side were not prepared to carry on the discussion on the basis on the equidistance principle.

Both delegations agreed to report to their respective authorities.

Annex 41

MESSAGE FROM PRIME MINISTER MINTOFF DATED 23 APRIL 1973

MESSAGE DATED 23 APRIL 1973 FROM THE HONORABLE DOM MINTOFF TO COLONEL GHADAFFI

Regret delegation sent by the Libyan Arab Republic to discuss median line between the two States have suggested as the underlying principle for the division of the continental shelf an inequitable yardstick completely unacceptable to the Government of Malta and not yet adopted between two sovereign territories anywhere else in the world.

Regret also that notwithstanding all my efforts it has not been possible for me to obtain a definite assurance of time and day on which I could meet you personally to discuss a finalization of this and other urgent matters and also an identification of our common interests before my impending visit to Italy, France, Belgium and Great Britain where meetings will be held with top responsible Ministers. I hope that you will be in a position to ask your Prime Minister to come and visit us within the next two or three days before my departure.

Meantime it is now impossible for us to evade the commitments we have made with international oil companies and tenders are being called for with a provisional median line identical with the one which was submitted to your Government over a year ago.

Annex 42

MALTESE NOTICE L.N. 41 OF 1973

[See Memorial of Malta, Annex 2, infra*]*

Annex 43

MESSAGE FROM PRIME MINISTER MINTOFF DATED 25 MARCH 1974

MESSAGE DATED 25 MARCH 1974 FROM THE HONOURABLE DOM MINTOFF TO COLONEL GHADAFFI

On February 27th, 1974, the Embassy in Malta of the Libyan Arab Republic by letter-minute No. 5/14/110 confirmed in writing the decisions which were reached between Your Excellency and myself at our meeting in Tripoli on February 16th, 1974.

Soon after my return from hospital—on March 12th, 1974—a Maltese mission headed by Mr. Joe Camilleri, Secretary to the Maltese Cabinet, arrived in Tripoli to urge for an early implementation of the agreement reached by us.

It was not possible for Mr. Joe Camilleri to meet Your Excellency personally but a memo was forwarded to Your Excellency through your Foreign Office.

My colleagues and I understand how full your hands have been with very important State matters in the past weeks but we are sure that you will not be offended if we ask Your Excellency to tell us whether it is still intended for one of the Libyan Ministers to come to Malta. As Your Excellency knows the Libyan suggestion was for the Minister of Communications to arrive during the first week in March.

Meantime for lack of a final decision, the previous difficulties are becoming more complicated. For instance, we have been informed by Mr. Fitury of the Brega Petroleum Marketing Company that no more oil will be supplied to Malta on the present credit basis and that his authority has been limited to provide only one load of crude oil and no more. Similar complications are arising with the definition of the median line, the Shipbuilding Project and financial losses incurred by Sea Malta (a Maltese-Libyan venture) owing to hopeless bureaucratic misunderstandings. About this latter point I am forwarding a separate memorandum.

If Your Excellency feels that it is better to send again a Maltese delegation to the Libyan Arab Republic I will of course act accordingly.

Annex 44

MALTESE DRAFT COMPROMIS OF ARBITRATION SUBMITTED IN APRIL 1974

COMPROMIS OF ARBITRATION BETWEEN THE GOVERNMENT OF THE LIBYAN ARAB REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF MALTA REGARDING THE DELIMITATION OF THE CONTINENTAL SHELF IN THE MEDITERRANEAN SEA

The Government of the Libyan Arab Republic and the Government of the Republic of Malta,

Considering that the sea-bed and subsoil in the Mediterranean Sea between Libya and Malta forms a continental shelf over which the two States under international law exercise sovereign rights for the purpose of exploring it and exploiting its natural resources;

Considering that for the purpose of exercising these sovereign rights it is desirable to lay down the exact boundary of the continental shelf between the two countries;

Considering that as a result of negotiations between the Parties some differences of opinion have become apparent in regard to the rules and principles to be applied in laying down such a boundary;

Considering the close and friendly relations existing between the two Nations and their Governments;

Intending to settle the differences which have thus arisen in the spirit of the friendly and good neighbourly relations existing between them;

Bearing in mind that for the purpose of settling differences between the two States which cannot be solved by means of diplomatic negotiations, judicial settlement is best in harmony with the basic principles of international law and the Charter of the United Nations to which the Parties firmly adhere;

Bearing in mind that Libya and Malta are both Members of the United Nations and as such parties to the Statute of the International Court of Justice, but also bearing in mind that under Article 95 of the Charter of the United Nations member States may submit their differences to tribunals other than the International Court of Justice;

Have decided to submit the differences that have arisen to an Arbitral Tribunal and for this purpose have agreed as follows:

Article 1

(1) The Tribunal is requested to decide the following Question:

> "What is the dividing line between that part of the Continental Shelf which appertains to the Libyan Arab Republic and that part which appertains to Malta?"

(2) The Tribunal shall reach its conclusions in accordance with the rules and principles of international law.

(3) The Tribunal is not called upon to decide in the matter *ex aequo et bono.*

Article 2

(1) Each of the Parties shall within 14 days after the entering into force of the present agreement designate one member of the Tribunal and inform the other Party thereof. The two members shall thereafter jointly designate a third member, which shall serve as the President of the Tribunal.

(2) If the two members appointed by the Parties cannot agree upon the designation of the third member of the Tribunal within 30 days after the entry into force of the present agreement, the designation will be made by the President of the International Court of Justice at The Hague at the request of either of the Parties.

(3) The members of the Tribunal shall all be of nationalities different from that of the Parties, and shall be lawyers having recognized competence in the field of international law.

Article 3

Each of the Parties shall within one month of the date of the entering into force of the present Agreement appoint an Agent or Agents who shall be responsible for its part of the proceedings. Each Party shall communicate the name and address of its respective Agent or Agents to the other Party and the members of the Tribunal.

Article 4

(1) In order to carry out the duties conferred on it by this *Compromis* the Tribunal shall meet in its first session within 30 days after the designation of the third member.

(2) The Tribunal shall initially establish its own rules of procedure, subject to the provisions of this *Compromis*, and may engage such technical, secretarial and clerical staff and obtain such services and equipment as may be necessary after consultation with the Agents.

Article 5

(1) The proceedings shall consist of written pleadings and oral hearings.

(2) The written pleadings shall be limited, unless the Tribunal otherwise directs, to the following documents:

- *(a)* Memorials which shall be submitted by the Government of each Party to the Tribunal and to the other Party within forty-five (45) days after the date of the first meeting of the Tribunal, as provided in Article 4 (1);
- *(b)* Replies which shall be submitted by the Government of each Party to the Tribunal and to the other Party within thirty (30) days after the date of submission of the respective memorials.

(3) The oral hearings shall be held in Geneva, Switzerland, at a time and place to be fixed by the President of the Tribunal after consultation with the Parties, but to commence not earlier than sixty (60) days after the submission of the respective replies.

Article 6

(1) The Tribunal shall render its decision as soon as practical after the conclusion of the oral hearings.

(2) The decision of the Tribunal may be adopted by a majority vote of the members. The decision shall contain a statement of reasons, and shall include the dissenting opinion, if any, of any member of the Tribunal.

(3) A signed copy of the decision shall be immediately transmitted to the two Parties.

Article 7

(1) All proceedings in connection with this arbitration shall be private, and the record of the proceedings shall not be made public except by agreement of the Parties.

(2) The decision of the Tribunal shall be made public, at a date to be agreed upon by the Parties.

Article 8

Any dispute between the Parties as to the interpretation of the decision shall, at the request of either Party, and within four weeks after the rendering of the decision, be referred to the Tribunal for clarification.

Article 9

(1) The expense of the Tribunal shall be borne equally by the two Parties. To this end the Tribunal shall render a final account stating the total amount of its expenses.

(2) Each Party shall bear its own expenses.

Article 10

The Parties shall give effect to the decision of the Tribunal by concluding an agreement on the delimitation of the continental shelf areas appertaining to each Party according to that decision. The Parties shall proceed to the conclusion of such an agreement immediately upon the expiry of the time-limit set forth in Article 8, or immediately upon the rendering of any clarification by the Tribunal as provided for therein.

Article 11

The present agreement shall enter into force on the day of signature thereof.

Annex 45

MALTESE CONTINENTAL SHELF (DESIGNATION OF AREA) ORDER, 1974

CONTINENTAL SHELF ACT, 1966

(ACT No. XXXV OF 1966)

The Continental Shelf (Designation of Area) Order, 1974

Date of commencement: 15th October, 1974

In exercise of the powers conferred upon him by section 3 of the Continental Shelf Act, 1966, the Prime Minister has made the following order:

1. This order may be cited as the Continental Shelf (Designation of Area) Order, 1974.

2. The area described in the Schedule hereto is by this Order designated as an area within which the rights mentioned in subsection (1) of section 3 of the Continental Shelf Act, 1966, are exercisable.

Schedule

The area bounded by lines joining the co-ordinates (which are expressed in degrees, minutes and tenths of a minute) set out hereunder. The aforesaid co-ordinates are:

(a)	D	35° 06′ 7 N
		14° 50′ 5 E
	H	35° 06′ 7 N
		15° 33′ 5 E
	K	34° 43′ 4 N
		15° 33′ 5 E
	E	34° 43′ 4 N
		14° 50′ 5 E
(b)	U	34° 43′ 4 N
		15° 03′ 3 E
	X	34° 43′ 4 N
		15° 23′ 3 E
	W	34° 27′ 2 N
		15° 23′ 3 E
	V	34° 27′ 2 N
		15° 03′ 3 E

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Annex 46

LETTER FROM ESSO STANDARD LIBYA DATED 29 SEPTEMBER 1974

National Oil Corporation
Tripoli
Libyan Arab Republic.

This letter of Agreement shall be an integral part of the Exploration and Production Sharing Agreement (the "Agreement") dated 13 Ramadan, 1394, corresponding to 29 September 1974, between the National Oil Corporation, as First Party, and Esso Standard Libya Inc., as Second Party, and will evidence our further agreement with reference to the areas subject thereto, as follows:

1. Until such time as there has been a demarcation of the offshore area subject to the jurisdiction of the Libyan Arab Republic from the offshore area subject to the jurisdiction of Malta, by mutual agreement between the two countries or by their mutual concurrence with a binding international convention, or by any other binding determination as shown by satisfactory documentary evidence, Second Party will not be obligated to commence Petroleum Operations either in those portions of the Offshore Contract Area or in those portions of the Area subject to the deep water commitment specified in Article 14, of the Agreement which lie in waters north of latitude 34° 10'00" north.

If, within three years from the Effective Date of the Agreement, the offshore boundary between the Libyan Arab Republic and Malta has been resolved as provided in paragraph 1 above and a portion of the Offshore Contract Area lies outside the jurisdiction of the Libyan Arab Republic, then Second Party's exploration commitment of forty million ($40,000,000) US dollars as to the Offshore Contract Area as provided in Article 4.3 of the Agreement shall be reduced. The reduction shall be in the proportion of the Offshore Contract Area in water depths not exceeding 500 metres determined to be outside the jurisdiction of Libya bears to the total area within the Offshore Contract Area in water depths not exceeding 500 metres. In addition, the portion of the Offshore Contract Area determined to be outside the jurisdiction of Libya shall not thereafter be subject to the Agreement.

(a) If at the expiration of three years from the Effective Date of the Agreement, the demarcation of the boundary as mentioned in paragraph 1 above, has not been resolved as provided therein, First Party shall furnish Second Party an official map showing the offshore area in question between the two Governments, and the extent to which the Offshore Contract Area lies within such area in question. For any portion of the Offshore Contract Area lying within such area, Second Party's exploration commitment of forty million ($40,000,000) US dollars shall be reduced in the same manner as provided for in paragraph 2 as if the portion of the Offshore Contract Area lying within the area in question is outside the jurisdiction of the Libyan Government. If First Party does not furnish such a map, the Parties shall enter into an agreement within six (6) months after the expiration of the three-year period as to the demarcation beyond which Petroleum Operations will not be conducted in the Offshore Contract Area and Se-

cond Party's forty million ($40,000,000) dollars exploration commitment shall be proportionately reduced as provided above in paragraph 2.

(b) If Second Party's exploration commitment is reduced as provided in subparagraph *(a)* above, but the boundary line between Libya and Malta is resolved as provided in paragraph 1 within the period between three years and six months from the Effective Date of the Agreement: (i) the description of the Offshore Contract Area shall, if necessary, be amended accordingly; (ii) Second Party's exploration commitment shall, if necessary, be proportionately adjusted; and (iii) the time available to complete the remaining amount of the exploration commitment as to the Offshore Contract Area shall be extended for a period of three years from the date on which satisfactory evidence of establishment of the boundary line is furnished. Provided, however, that if such evidence has not been furnished by the end of the six-year period described in Article 4 of the Agreement, Second Party's obligation as to the remaining amount of such commitment shall thereupon terminate.

In the event that any portion of the area subject to the deep water commitment specified in Article 14 of the Agreement is determined to lie outside the jurisdiction of Libya, such portion of the deep water commitment shall not thereafter be subject to the Agreement; however, Second Party's deep water commitment shall not be proportionately reduced as in the case of the Offshore Contract Area.

If you are in agreement with the above, please so indicate by your signature below.

ESSO STANDARD LIBYA INC.

By: *(Signed) [Illegible.]*

NATIONAL OIL CORPORATION

By: *(Signed) [Illegible.]*

Annex 47

LIBYAN NOTE VERBALE DATED 30 JUNE 1974

[Arabic text not reproduced]

(Unofficial Translation)

DEPARTMENT OF THE INTERNATIONAL ORGANIZATIONS AND TECHNICAL CO-OPERATION

SECTION OF PETROLEUM AFFAIRS

The Ministry of Foreign Affairs presents its best compliments to the Embassy of Malta, and has the honour to inform it that it has come to the knowledge of the Ministry that the esteemed Government of Malta had granted the Texaco Oil Company the right to prospect for oil in the area south of Malta. The Government of the Libyan Arab Republic wishes to record its reservation with the Government of Malta as regards this action.

The Ministry of Foreign Affairs avails itself of this opportunity to express once again to the Embassy of Malta its highest appreciation and respect.

Annex 48

LIBYAN NOTE VERBALE DATED 14 JULY 1974

[Arabic text not reproduced]

(Unofficial Translation)

NOTE VERBALE DATED 14 JULY 1974 FROM THE LIBYAN MINISTRY OF FOREIGN AFFAIRS TO THE EMBASSY OF MALTA IN TRIPOLI

The Ministry has the honour to inform that the competent Authorities in the Libyan Arab Republic have come to know that the Government of Malta has signed an agreement with TEXACO on 31 May 1974, according to which the Company has been granted the concession for oil exploration on the sea-bed south of Malta.

The *Times of Malta* has published on 1 July 1974 a warning to ships and fishing boats to stay away from the ship which will be carrying out seismographic survey for the next two months at the distance of 40 miles south of Malta between the meridians of latitude 34° 26′ to the south and 35° 06′ to the north and the meridians of longitude 14° 50′ to the west and 15° 32′ to the east.

And since both the agreement and the survey mentioned above fall within a part of sea-bed area which is subject to negotiations between the two countries with the view to determine what appertains to each country, the Ministry, therefore would like to know how accurate is the news and will be grateful if the Embassy exerts its good offices with the competent Maltese authorities for appropriate details in this respect.

The Ministry of the Libyan Arab Republic avails itself of this opportunity to express to the Embassy of Malta the assurance of its highest consideration and respect.

Annex 49

MAP SHOWING THE AREA OF SEISMIC SURVEY OF MALTA: 1974

[Not reproduced]

Annex 50

LIBYAN NOTE VERBALE DATED 17 JULY 1974

[Arabic text not reproduced]

(Unofficial Translation)

DEPARTMENT OF INTERNATIONAL ORGANIZATIONS AND TECHNICAL CO-OPERATION

SECTION OF PETROLEUM AFFAIRS

The Ministry of Foreign Affairs presents its best compliments to the esteemed Embassy of the Republic of Malta and has the honour to refer to the note of this Ministry, No. MT13/4988 dated 30 June 1974 concerning the granting by the Maltese Government of the right to prospect for oil south of Malta to the Texaco Oil Company.

The Ministry wishes to request the Embassy of the Republic of Malta to supply it with a chart showing the area in which prospecting for oil is to take place.

The Ministry of Foreign Affairs avails itself of this occasion to express again to the esteemed Embassy its highest regard and respect.

Annex 51

MALTESE NOTE VERBALE DATED 18 JULY 1974

The Embassy of Malta presents its compliments to the Ministry of Foreign Affairs of the Libyan Arab Republic and has the honour to acknowledge receipt of its Note Verbale, Ref. MT 13/5310, dated 17th July 1974 (26th Jumada at-Thani, 1394).

The contents of the Note Verbale are being referred to the appropriate authorities in Malta for the necessary action. It may be noted at the same time that the contents of Note Verbale MT 13, dated 30th June 1974 (9 Jumada at-Thani 1394) were conveyed to the appropriate authorities in Malta, as requested, without any delay.

The Embassy of Malta avails itself of this opportunity to renew to the Ministry of Foreign Affairs the assurance of its highest consideration.

The Ministry of Foreign Affairs
Tripoli
Libyan Arab Republic.

Annex 52

MALTESE NOTE VERBALE DATED 25 JULY 1974

(Unofficial Translation)

NOTE VERBALE SENT BY THE EMBASSY OF MALTA IN TRIPOLI TO THE MINISTRY OF FOREIGN AFFAIRS OF THE LIBYAN ARAB REPUBLIC ON THE 25th JULY 1974

The Embassy of Malta presents its compliments to the Ministry of Foreign Affairs of the Libyan Arab Republic and has the honour to acknowledge receipt of its Note Verbale, reference 1/5/9/2593, dated 14th July 1974 (23/6/94).

The contents of the Note Verbale are being referred to the appropriate authorities in Malta for the appropriate procedures.

The Embassy of Malta avails itself of this opportunity to renew to the respected Ministry of Foreign Affairs its highest consideration and respect.

Annex 53

MALTESE NOTE VERBALE DATED 8 AUGUST 1974

The Embassy of Malta presents its compliments to the Ministry of Foreign Affairs of the Libyan Arab Republic and, in replying to the Ministry's Note Verbale of the 14th July 1974 has the honour to state as follows:

> The Government of Malta will always welcome any approach made by the friendly Embassy of the Libyan Arab Republic in Malta for information about any subject. A Seismic boat has been operating at a distance of 40 miles south of Malta between latitude 34 degrees 26 minutes south, 35 degrees 06 minutes north, and longitude 14 degrees 50 minutes west and 15 degrees 32 minutes east. The area in question falls within the continental shelf of Malta. It is also north of the equidistance line separating the submarine areas of Malta and Libya. Therefore any activities relating to the exploration and exploitation of minerals and oil in this region are exclusively a matter for Malta's domestic jurisdiction. This is also why the Government of Malta cannot accept the reservation made by the Government of Libya on the 30th June 1974, with regards to the granting by the Government of Malta of the rights to Texaco Malta Inc. for oil exploration.
>
> In this connection the Embassy of Malta in answer to the Note Verbale of the Ministry of Foreign Affairs of the Libyan Arab Republic of the 17th July 1974, has the honour to attach a copy of Legal Notice 41 of 1973 issued as a supplement to the Malta *Government Gazette* of the 24th April 1973, in which the co-ordinates of the areas requested are stated. The relevant map is also attached.
>
> Whilst on this subject the opportunity is being grasped to record the fact that the Government of Malta cannot accept or recognize the contention that the Gulf of Sirte, south of a line drawn along latitude 32 degrees 30 minutes north is a part of Libyan territory or falls under Libyan sovereignty. The Government of Malta continues to regard as the baselines for the delimitation of Libyan territorial waters and continental shelf the internationally recognized baselines as applicable prior to October 1973. Accordingly, the Government of Malta must reserve all its rights as well as those of its nationals and licensees in the area.

The Embassy of Malta avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Libyan Arab Republic the assurance of its highest consideration.

Ministry of Foreign Affairs
of the Libyan Arab Republic
Tripoli.

Annex 54

MALTESE LETTER DATED 26 NOVEMBER 1974

Please refer to your letter dated 13th November, 1974, requesting a Wireless Telegraphy licence for radio equipment at T. C. Smith, 12 St. Christopher Street, Valletta, to communicate with the M/V *Petrol*.

Please note that areas north of the following co-ordinates constitute the continental shelf of Malta over which the Government of Malta has sovereign rights:

(a)	34° 27′ 0 N	13° 27′ 4 E
(b)	34° 20′ 3 N	13° 54′ 3 E
(c)	34° 17′ 2 N	14° 06′ 3 E
(d)	34° 16′ 2 N	14° 16′ 2 E
(e)	34° 14′ 0 N	14° 39′ 8 E
(f)	34° 12′ 3 N	15° 02′ 5 E
(g)	34° 11′ 0 N	15° 25′ 0 E
(h)	34° 12′ 8 N	15° 43′ 0 E
(i)	34° 14′ 8 N	16° 00′ 0 E
(j)	34° 19′ 3 N	16° 37′ 5 E
(k)	34° 23′ 5 N	17° 16′ 0 E
(l)	34° 27′ 2 N	17° 46′ 2 E
(m)	34° 48′ 0 N	18° 04′ 6 E

The Government of Malta requests a categoric assurance from your company that no seismic lines have been shot in any part of the above area.

(Signed) M. ABELA,
Secretary.

Messrs. Seismograph Service (Marine) Ltd.
c/o Messrs. T. C. Smith
12 St. Christopher Street
Valletta.

Annex 55

LIBYAN LETTER DATED 8 JUNE 1975, IN ENGLISH

[Arabic text not reproduced]

LIBYAN ARAB REPUBLIC
MINISTRY OF PETROLEUM

The Government of the Libyan Arab Republic has learnt that your Company is carrying out exploration activities aiming at the extraction of oil in off-shore areas in the Mediterranean, the locations of which are described by the co-ordinates shown in the attached data. The said areas constitute a Continental Shelf upon which the Libyan Arab Republic maintains full sovereignty.

Accordingly, the Government of the Libyan Arab Republic hereby demands a firm assurance from your Company confirming that no such exploration or drilling activities are being carried out within the said areas. Your performance of such activities without obtaining a prior permit or authority from the Libyan Arab Republic shall be considered an infringement upon its rights, thus justifying the adoption of any measures deemed necessary to safeguard our legitimate rights.

(Signed) M. M. ZREGH,
Undersecretary,
Ministry of Petroleum.

Encl.: Detailed data on the locations referred to in this letter.

AQUITAINE

Area comprised between points:

A	34° 26′ 15° 28′
B	34° 26′ 15° 58′
C	34° 13′ 15° 51′
D	34° 11′ 15° 28′

ELF-ERAP

Area comprised between points:

A	34° 26′ 15° 28′
B	34° 26′ 15° 58′
C	34° 13′ 15° 51′
D	34° 11′ 15° 28′

HISPANOIL

Area comprised between points:

A	34° 26′ 15° 28′
B	34° 26′ 15° 58′
C	34° 13′ 15° 51′
D	34° 11′ 15° 28′

WINTERSHALL

Area comprised between points:

A	34° 26′ 15° 28′
B	34° 26′ 15° 58′
C	34° 13′ 15° 51′
D	34° 11′ 15° 28′

TEXACO

(1) Area comprised between points:

A	34° 54′ latitude 14° 49′ longitude
B	34° 54′ 15° 11′
C	34° 43′ 15° 11′
D	34° 43′ 14° 49′

(2) Area comprised between points:

A	34° 54′ 15° 32′
B	34° 43′ 15° 32′
C	34° 43′ 15° 11′
D	34° 54′ 15° 11′

(3) Area comprised between points:

A	34° 43′ 15° 03′
B	34° 43′ 15° 22′
C	34° 26′ 15° 22′
D	34° 26′ 15° 03′

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JOC OIL EXPLORATION CO. INC.

(1) Area comprised between points:

A	34° 43′ 15° 22′
B	34° 43′ 15° 41′
C	34° 26′ 15° 22′
D	34° 26′ 15° 41′

(2) Area comprised between points:

A	34° 43′ 15° 41′
B	34° 43′ 16° 06′
C	34° 26′ 15° 58′
D	34° 26′ 15° 41′

(3) Area comprised between points:

A	34° 26′ 14° 54′
B	34° 26′ 15° 12′
C	34° 11′ 15° 12′
D	34° 12′ 14° 54′

CITIES SERVICE

Area comprised between points:

A	34° 26′ 15° 28′
B	34° 26′ 15° 58′
C	34° 13′ 15° 51′
D	34° 11′ 15° 28′

Annex 56

MALTESE LETTER DATED 17 JUNE 1975

[See Memorial of Malta, Annex 9, infra*]*

Annex 57

LETTER FROM TOTAL DATED 31 JULY 1975

(Transcription)

Monsieur ABELA,
Chairman Oil Committee,
Ministry of Commonwealth and
Foreign Affairs,
Palazzo Parisie,
Merchants Street,
VALLETTA (Malta)

La CFP vient de nous transmettre vos lettres du 17 juin et 17 juillet 1975 par lesquelles vous nous informez que la République de Malte revendique des droits souverains sur une partie du plateau continental méditerranéen situé au nord d'une ligne définie par les coordonnées que vous indiquez dans votre lettre du 17 juin.

En réponse, nous avons l'honneur de vous informer que nous sommes titulaires d'un contrat dit « petroleum exploration and production sharing contract » conclu le 13 octobre 1974 avec la National Oil Corporation libyenne dûment habilitée, à cet effet, par une loi libyenne du 23 septembre 1974, et que ce contrat a été ratifié par une loi promulguée par le Conseil de la Révolution de la République arabe libyenne [le] 13 novembre 1974.

Ce contrat prévoit notamment que notre Compagnie doit agir en tant qu'opérateur pour le compte de la NOC sur une partie du plateau continental méditerranéen dont une portion peut effectivement chevaucher avec les zones délimitées dans votre lettre du 17 juin. Le problème que vous soulevez relève donc de la détermination des limites géographiques de l'exercice par la République de Malte et la République arabe libyenne de leurs droits souverains sur ce plateau.

En conséquence, nous transmettons votre correspondance à la NOC ainsi qu'aux autorités libyennes.

Le Président-Directeur général,
(Signé) F. CASTELLANI.

Annex 58

MALTESE LETTER DATED 13 AUGUST 1975

Thank you for your letter of the 31st July, 1975.

I repeat that the position of the continental shelf delimited in my letter of the 17th June, constitutes a continental shelf upon which the Republic of Malta maintains full sovereign rights and any exploration or drilling activities therein without a licence issued to you by the Government of the Republic of Malta, constitutes an infringement of Malta's sovereignty, justifying the adoption of measures necessary to safeguard the legitimate rights of the Republic of Malta.

Again I request your Company to give the Government of the Republic of Malta a categoric assurance that no such exploration or drilling activities are being or will be carried out in any part of the area mentioned in my letter of the 17th June, 1975.

(Signed) M. ABELA,
Chairman, Oil Committee,

F. Castellani, Esq.
Chairman
Compagnie des Pétroles Total (Libye)
Avenue Ahmed Cherif
Building Safraki
P.O. Box 4833
Tripoli.

Annex 59

LIBYAN DRAFT AGREEMENT TRANSMITTED ON 17 JANUARY 1976

[Arabic text not reproduced]

SPECIAL AGREEMENT BETWEEN THE GOVERNMENT OF THE LIBYAN ARAB REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF MALTA FOR THE SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE OF A DIFFERENCE

The Government of the Libyan Arab Republic and the Government of the Republic of Malta,

Agree to recourse to the International Court of Justice to decide the following question:

Article (1)

The Court is requested to decide the following question:

What principles and rules of international law are applicable to the delimitation of the areas of the continental shelf and the economic zone which appertain to the Libyan Arab Republic and that of the Republic of Malta.

Article (2)

The Government of the Libyan Arab Republic and the Government of the Republic of Malta shall carry on the necessary contacts to determine the dividing line of the continental shelf and the economic zone appertaining to each of them in accordance with the decision of the International Court of Justice.

Article (3)

(1) The proceedings shall consist of written hearings and oral hearings.

(2) Without prejudice to any question of burden of proof which might arise during the written hearings which consist of the following:

(a) Memorials shall be submitted to the Court by the two Governments

- The Government of the Republic of Malta shall submit its memorial within one year from the date of notification of the present agreement to the Court.
- The Government of the Libyan Arab Republic shall submit its Counter-Memorial within one year from the date of the delivery of the memorial of the Government of Malta.

(b) Replies to be delivered and exchanged in the same presaid manner within six months after the delivery of the memorials to the Registrar.

(c) Additional written pleadings may be presented and exchanged within periods fixed by the Court at the request of one of the parties or if decided by the Court after consultation with the other party.

(3) The order of speaking of the oral hearings shall be agreed upon by the two parties or will be decided by the Court according to the request of either of

them. And in all cases the order of the speaking shall not prejudice to any question of burden of proof which might arise or avoid the Court to take into consideration any new concept adopted by an international conference of the law of the sea.

Article (4)

Following the final decision of the International Court of Justice, the Government of the Libyan Arab Republic and the Government of the Republic of Malta shall enter into negotiations for concluding an agreement determining the areas of the continental shelf and the economic zone appertaining to each of them in accordance with the rules and principles adopted by the Court.

Done in   on the   day of
corresponding to   in two originals
English and Arabic. Each text equally authentic.

For the Government of the Libyan Arab Republic	For the Government of the Republic of Malta.

Annex 60

MALTESE DRAFT AGREEMENT SUBMITTED IN FEBRUARY 1976

[Same text as Annex 11 of the Memorial of Malta, infra*]*

Annex 61

MALTESE NOTE VERBALE DATED 5 OCTOBER 1976

The Embassy of Malta presents its compliments to the Ministry of Foreign Affairs of the Libyan Arab Republic and has the honour to refer to the agreement signed in Malta on the 23rd May 1976 (corresponding to the 24th Jumada El Oula 1396 H) between His Excellency Taha Sharif Ben Amer, Minister of State for Revolutionary Command Council Affairs (for the Libyan Arab Republic) and the Honourable Wistin Abela, Minister of Development (for the Republic of Malta), concerning the submission to the International Court of Justice of a difference on the delimitation of the continental shelf.

As has already been communicated verbally on a number of occasions, the said Agreement has duly been ratified by the Government of Malta, and the relevant instrument of ratification has been with the Embassy since last May.

The Government of Malta is anxious to proceed to the exchange of instruments of ratification as provided by Article IV of the Agreement, and the Embassy would be grateful if, in the light of the very friendly relations existing between the two Governments, an early date could be set for the formal exchange of the instruments of ratification.

The Embassy of the Republic of Malta avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Libyan Arab Republic the assurances of its highest consideration.

The Ministry of Foreign Affairs
of the Libyan Arab Republic
Tripoli.

Annex 62

MESSAGE FROM PRIME MINISTER MINTOFF DATED 3 DECEMBER 1976

[See Memorial of Malta, translation of Annex 14, infra*]*

Annex 63

LETTER FROM MAJOR JALLOUD DATED 15 DECEMBER 1976

[Arabic text not reproduced]

(Unofficial Translation)

LETTER SENT BY MAJOR ABDUSSALAM JALLOUD, PRIME MINISTER OF THE LIBYAN ARAB REPUBLIC, TO THE HON. DOM MINTOFF, PRIME MINISTER OF MALTA, ON 15 DECEMBER 1976

I have seen your letter dated 3rd December 1976 addressed to Brother Colonel Muammar Algaddafi, Chairman of the Revolution Command Council.

No doubt that you know the efforts which have been rendered by the Libyan Arab Republic in order to promote the co-operation with the friendly Republic of Malta in various fields including assistance to the Maltese economy.

When the subject of dividing of the continental shelf and the economic zone between the two countries was raised, both of us found that it is not an easy subject and it cannot be settled quickly because the international laws in this regard did not establish fixed basis yet. An indication of this is that the Conference on the Law of the Sea is on the way to put down an international convention and has not reached a final text for the same which would affect this subject to a large extent.

No doubt, accordingly, that you share with me the opinion that it is in the interest of our two friendly peoples not to take a hasty unilateral decision. Instructions have been issued to the appropriate experts in the Libyan Arab Republic to give priority to this subject in their researches and studies in order to reach a definite opinion in the nearest time. Such studies would, naturally, include the agreement signed last May which you referred to in your letter.

Annex 64

EXTRACTS FROM THE MINUTES OF A MEETING HELD ON 16 OCTOBER 1979

EXTRACTS FROM THE AGREED MINUTES OF THE MEETING BETWEEN MAJOR JALLOUD AND H.E. Mr. DOM MINTOFF, PREMIER OF MALTA, OCTOBER 16, 1979

"His Excellency Mr. Dom Mintoff, the Prime Minister of Malta, visited the Socialist People's Libyan Arab Jamahiriya on the 16th of October 1979. He met Major Abdussalam Jalloud, Eng. Abdulmajid Elgaoud, the Liaison Secretary, and Edgar Mizzi, the Attorney General, attended the meeting.

Major Jalloud welcomed the Prime Minister of Malta in the Socialist People's Libyan Arab Jamahiriya and expressed his hope that this visit would contribute to the consolidation of the current co-operation between the Socialist People's Libyan Arab Jamahiriya and Malta.

Major Jalloud asked Mr. Mintoff to go through the subjects that he would like to discuss.

Mr. Mintoff said he had the following points for discussion:

. . . .

Finally, Mr. Mintoff spoke about the line separating the continental shelves of the two countries. Mr. Mintoff said that the background and the developments of this problem are known to the Socialist People's Libyan Arab Jamahiriya and that Malta has now a new proposal. This proposal suggests setting aside a margin ten miles wide (five miles from each side) to be exploited by neither party. The area extending from the border of this margin to the coast could of course be exploited.

. . . .

Major Jalloud then answered the Maltese Prime Minister. The following were his statements:

. . . .

6. The Socialist People's Libyan Arab Jamahiriya did not agree with the Maltese proposal for the division of the continental shelf. They propose to reconsider the agreement of May 1976 which had not been ratified by the People's Congresses. Arrangements would be made for its re-submission to the Congresses during the coming session if Malta accepts the following amendments:

Article One: To delete the last four lines in the English text.

Article Two: Malta pledges to be the first to submit her papers and documents because she is the party which favours taking the case to the Court. The

Socialist People's Libyan Arab Jamahiriya will not present her papers before having seen the Maltese papers submitted to the Court.

After a lengthy discussion it was agreed that the experts of the two countries should meet at the beginning of November to outline a proposal taking into consideration the interest of both sides."

. . . .

Annex 65

MALTESE NOTE VERBALE DATED 21 NOVEMBER 1979

[See Memorial of Malta, Annex 17, infra*]*

Annex 66

LIBYAN NOTE VERBALE DATED 10 MAY 1980

[Arabic text not reproduced]

(Unofficial Translation)

The Secretariat of the Socialist People's Libyan Arab Jamahiriya presents its compliments to the esteemed Embassy of the Republic of Malta and requests to inform the following to the Malta Government.

The competent Authorities in the Socialist People's Libyan Arab Jamahiriya have come to know about the granting by the Malta Government of contracts for exploration and exploitation of oil in areas falling under Libyan sovereignty on the continental shelf.

The Socialist People's Libyan Arab Jamahiriya whilst strongly denouncing the Maltese action which affects areas falling undisputedly under Libyan sovereignty and whilst reserving its full rights in accordance with international law, would confirm the following points:

1. The areas for which above contracts were concluded are situated on the continental shelf of the Jamahiriya in accordance with international law and custom.
2. The Jamahiriya, whilst strongly denouncing the violation by the Malta Government of its firm rights, declares its non-recognition of any activities, contracts and assignments, previous or forthcoming which would affect its sovereignty.
3. The contents of the contracts concluded by the Malta Government contradict in form and in substance the friendly goals which were embodied by the previous and present endeavours and contracts between the two countries.
4. The Socialist People's Libyan Arab Jamahiriya insistently invites the Malta Government to avoid any measures and eliminate any act which would affect the friendly relations between the two countries.

The Secretariat of the Socialist People's Libyan Arab Jamahiriya avails itself of this opportunity to renew to the Embassy of the Republic of Malta the assurances of its highest consideration.

To the esteemed Embassy of the Republic of Malta—Tripoli.

Annex 67

MALTESE NOTE VERBALE DATED 21 MAY 1980

[See Memorial of Malta, Annex 19, infra*]*

Annex 68

LIBYAN NOTE VERBALE DATED 20 AUGUST 1980

[Arabic text not reproduced]

TO MANAGER OF TEXACO OIL COMPANY

The Secretariat of Oil of the Socialist People's Libyan Arab Jamahiriya has learned that a drilling rig belongs to your Company has arrived in the territorial waters of the Socialist People's Libyan Arab Jamahiriya with a view to start drilling operations in this area which is subject to the jurisdiction and sovereignty of the Jamahiriya. The performance of such operations by your Company without prior licence from the competent authorities in the Jamahiriya will render it liable to penalties in accordance with principles of international law and internal laws and regulations of the Jamahiriya.

We hereby warn you that your company should immediately refrain from performing any drilling operations, withdraw the rig and leave the area, otherwise the Jamahiriya is obliged to prevent your company from doing so by all means including force on the ground that what is being done by your company is a hostile action against a sovereign State. The Jamahiriya has the legitimate right to prevent it and remove its effects by all means in accordance with the provisions of international law.

(Signed) Abdussalam M. ZAGAR,
Secretary of Oil.

Annex 69

TELEX FROM SAIPEM DATED 21 AUGUST 1980

Following your meeting held with the Ministry of Petroleum concerning drilling activity with our "Saipem Due" you are kindly requested to personally forward to the Secretary of Oil, Mr. Abdussalam M. Zagar following message:

Through the Manager of our Saipem Due Platform we received your communication affirming that the drilling operations we are performing with the Saipem Due on account of Texaco Malta are in areas under the jurisdiction and sovereignty of the Jamahiriya.

We have immediately informed Texaco Malta of the communication received and meanwhile we have ordered the suspension of normal drilling operations and beginning of works necessary to put the well in safe conditions.

We have also received the copy of the Texaco reply to your notice in which it appears the possibility that a misunderstanding has occurred.

We are proceeding with the operations for putting the well in safety conditions hoping that in the meantime the possible misunderstanding will be clarified and a satisfactory situation be found.

Annex 70

UNITED NATIONS SECURITY COUNCIL DOCUMENT S/14140, 1 SEPTEMBER 1980

LETTER DATED 1 SEPTEMBER 1980 FROM THE PERMANENT REPRESENTATIVE OF MALTA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

In accordance with Article 35 of the Charter of the United Nations, I have the honour to request an urgent meeting of the Security Council, in view of an illegal action taken by the Libyan Government which also constitutes a threat to regional and international peace.

As far back as 23 May 1976, after protracted negotiations, the Libyan and Maltese Governments signed an agreement to submit the question of delimitation of the continental shelf area between the two countries to the International Court of Justice.

In April this year, at the highest level, it was reaffirmed to the Maltese Government that the Libyan People's Congress would by June 1980 ratify the 1976 Agreement.

This ratification was not implemented by the Libyan authorities as promised.

In the circumstances, the Malta Government could no longer postpone drilling operations, but prudently advised the concessionaires to refrain from drilling in a band 15 miles wide north of the median line between the two countries. The Malta Government received no written objection from the Libyan Government following Malta's notification on 21 November 1979 of its intention to commence drilling operations.

On 20 August 1980, without any word to the Maltese Government, and without explanation, Libyan warships surrounded the oil rig, ordered the Italian Captain to terminate drilling operations, threatening him otherwise with the use of force. The representative of the drilling company resident in Tripoli, a person of Italian nationality, was arrested and threatened with dire consequences unless drilling operations were to cease.

The rig was flying an Italian flag. The company under licence is American. The crew of the rig consisted of various nationalities, principally Maltese, American, Italian and German.

The incident is therefore potentially serious, with wide-ranging international implications. The Maltese Government refrained from responding to the use of force, but is taking action to defend its legitimate interests.

Malta is acting in accordance with the principles of international law. From her action Libya is determined to avoid recourse to legal procedures and to rely on the use force.

In view of the potential danger to peace and security in the region the Security Council is urgently requested to ask Libya to desist from making further provocative threats and from taking any menacing actions.

I would be prepared to provide further details of the illegal, unwarranted and provocative action taken by the Libyan Government as soon as the Security Council meeting is convened.

I have the honour to request, as a first step, that this letter be urgently issued as a Security Council document.

(Signed) V. J. GAUCI,
Permanent Representative
of Malta to the United Nations.

Annex 71

UNITED NATIONS SECURITY COUNCIL DOCUMENT S/14145, 3 SEPTEMBER 1980

LETTER DATED 3 SEPTEMBER 1980 FROM THE DEPUTY PERMANENT REPRESENTATIVE OF THE LIBYAN ARAB JAMAHIRIYA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

With reference to the letter dated 1 September 1980, from the Permanent Representative of Malta to the United Nations, addressed to the President of the Security Council (S/14140), I have the honour to bring to your kind attention that, in response to the Maltese claim, the Libyan Arab Jamahiriya views the Maltese-Libyan dispute over the continental shelf as a bilateral issue that can be settled through negotiations and direct communication between the two countries.

The continental shelf issue still remains the subject of negotiation between both sides. An agreement has been initiated to deal with this issue by submitting it to the International Court of Justice. The final procedures concerning implementation of that agreement have not been completed. The agreement has been submitted to the Popular Congresses in the Jamahiriya. The Congress made several remarks that were conveyed to the Maltese Government for its comment in order that the necessary measures for ratification can be completed and consequently submitted to the International Court of Justice. Accordingly, the oil drilling operations in the disputed region should not have taken place before the International Court of Justice has issued its resolution. But unexpectedly, Malta carried out explorations and drilling operations within the aforementioned region. Nevertheless, the Libyan Arab Jamahiriya affirms that it has not taken, on its part, any measure that could disturb peace and security in the region. It also confirms that the issue of the continental shelf between the two countries will be submitted to the International Court of Justice. Consequently, there is no necessity that calls for the convening of the Security Council.

Furthermore, this issue is secondary in significance when compared to the size and scope of the positive relations between the two countries, which the Jamahiriya anxiously desires to continue. The strong relationship shows through the various bilateral agreements between the two friendly nations, in the various fields of co-operation aimed at the consolidation of the friendship bonds and good neighbourliness with the Republic of Malta.

The Libyan Arab Jamahiriya remains confident that the genuine historic, social and economic bonds with Malta are strong enough to help overcome the issue of the continental shelf.

I have the honour to inform also that the Chairman of the Non-aligned Movement has initiated efforts and sent two envoys to both countries to seek their point of views and find a peaceful settlement for the dispute. The Libyan Arab Jamahiriya welcomes the said initiative and hopes that a chance be given to it and to its results.

I have the honour to request that this letter be issued as a Security Council document.

(Signed) Mr. Awad S. BURWIN,
Deputy Representative
of the Libyan Arab Jamahiriya to the United Nations.

Annex 72

UNITED NATIONS SECURITY COUNCIL DOCUMENT S/14256, 13 NOVEMBER 1980

REPORT BY THE SECRETARY-GENERAL ON THE MISSION OF HIS SPECIAL REPRESENTATIVE TO MALTA AND THE LIBYAN ARAB JAMAHIRIYA

1. In a letter dated 17 October 1980 (S/14228) addressed to the President of the Security Council, the Secretary-General recalled that the Security Council was seized of a complaint by Malta against the Libyan Arab Jamahiriya and that the Council had held a meeting on the question on 4 September 1980. Following that meeting, the Secretary-General had held consultations with the parties and had decided, with their agreement and in order further to assist in the search for a mutually acceptable solution, to send a special representative to discuss the issues at hand with the two Governments. In a letter dated 22 October 1980 (S/14229), the President of the Security Council informed the Secretary-General that his letter had been brought to the attention of the members of the Council and that they had agreed with the Secretary-General's proposal.

2. The present report has been prepared on the basis of the consultations held in Malta and the Libyan Arab Jamahiriya from 29 October to 2 November 1980, by Mr. Diego Cordovez, who was designated by the Secretary-General as his Special Representative.

3. The reason underlying the dispute between Malta and the Libyan Arab Jamahiriya is that there is no agreed delimitation of the continental shelf between the two countries. The matter has been under discussion since 1972. Having failed to reconcile their legal positions, the two Governments, on 23 May 1976, signed a Special Agreement to submit the matter to the International Court of Justice. Malta rests its case for commencing off-shore exploratory drilling operations, an action which led to the incident of 20 August 1980, upon the contention that the Libyan Arab Jamahiriya has so far failed, without justification, to ratify the 1976 Agreement. The Libyan Arab Jamahiriya does not accept unilateral responsibility for the delay in ratification.

4. A review of the events and documentary records over the last four years indicates that the Agreement signed by the parties in 1976 was followed by a series of complex negotiations. Indeed, the contents and terms of the Agreement were periodically subject to further discussion and negotiation, at times in the context of other aspects of the relations between Malta and the Libyan Arab Jamahiriya. Modifications in the text of the Agreement were discussed as recently as November 1979. The exchanges between the two Governments on the issue, and the circumstances surrounding some of those exchanges, led to a gradual deterioration in the relations between Malta and the Libyan Arab Jamahiriya. The drilling incident of 20 August exacerbated the situation; Libyan personnel were expelled from Malta, and several lines of co-operation and assistance were substantially curtailed.

5. The Secretary-General consequently concluded that the early ratification of the 1976 Agreement would be an essential first step towards an easing of tentions between the two countries. That view was conveyed to the two Governments. The Secretary-General is now in a position to report to the Security Council that the Libyan Arab Jamahiriya has undertaken unconditionally

to submit the original text of the Agreement to the Popular Congresses for ratification during their current session, which is scheduled to conclude on 22 November, with a view to exchanging the instruments of ratification and formulating the joint notification to the Registrar of the International Court of Justice, as provided for in Article IV of the Agreement, during the first two weeks of December 1980. The Secretary-General is prepared to assist the parties in carrying out the relevant formalities should they so request.

6. Malta has confirmed that it had accepted an implicit understanding, when the Agreement was signed in 1976, that it would not begin drilling operations until the Court had reached a decision and an agreement on delimitation had been concluded in accordance with Article III of the Agreement. Malta considered that since the Libyan Arab Jamahiriya had failed to ratify the Agreement, it was legally entitled to commence drilling operations. The efforts aimed at the production of oil were considered by Malta to be a vital economic necessity and an integral part of its evolving policy of neutrality and non-alignment. The financial losses deriving from Malta's decision to close in 1979 the military bases maintained by the United Kingdom for many years would consequently have been offset. In the circumstances, Malta wished to enter into negotiations with the Libyan Arab Jamahiriya whereby drilling operations in the disputed area, pending the decision of the Court, would be discussed. It wished such discussions to be conducted, not in the legal context of delimitation issues but within the framework of the traditional co-operation and understanding between the two countries. Malta has pledged to hand over any part of the continental shelf which the Court might decide does not belong to it.

7. The Libyan Arab Jamahiriya rejects any legal justification of Malta's decision to commence drilling operations, if only because, as indicated above, it does not accept unilateral responsibility for non-ratification of the 1976 Agreement. The Libyan Arab Jamahiriya considers that drilling operations in the disputed area would prejudice the delimitation case. It contends that interim drilling operations cannot even be considered as falling within the category of "provisional arrangements" envisaged in Article 83 of the informal text on the law of the sea (A/CONF.62/WP.10/Rev.3). Accordingly, it holds the view that a discussion on interim drilling operations could, in itself, compromise its legal position.

8. The Secretary-General has conveyed the position of the Libyan Arab Jamahiriya on the subject of interim drilling operations to the Government of Malta. In so doing, he has expressed his confidence that the submission of the delimitation case to the International Court of Justice next month will bring about an improvement of relations between the two countries. The Secretary-General notes that both parties have expressed the hope that further progress in the deliberations of the United Nations Conference on the Law of the Sea will also contribute to a greater clarification of the issues involved. The Libyan Arab Jamahiriya has reiterated that it supports Malta's policy of neutrality and non-alignment, and that it stands ready to continue and strengthen relations of friendship and co-operation with Malta as in the past. Malta has informed the Secretary-General that it would expect, in that context, to work out an arrangement with the Libyan Arab Jamahiriya which, as an expression of goodwill, would enable Malta to conclude the one drilling operation which was suspended on 20 August 1980.

9. The Secretary-General trusts that the steps taken to clarify the issues and lay the foundations of a peaceful solution outlined in the present report will enable the two parties to look towards the future in a spirit of renewed co-operation and mutual understanding.

Annex 73

LIBYAN NOTE VERBALE DATED 26 JANUARY 1981

The Popular Office of the Socialist People's Libyan Arab Jamahiriya presents its compliments to the Ministry of Foreign Affairs and has the honour to inform of the following.

As you are aware, the Leader of the Great 1st September Revolution, Colonel Mu'Armar Gaddafi suggested in the beginning of September 1980 to the Peoples' Congresses, the importance of the ratification of the continental shelf treaty between Malta and Libya.

You know also that Staff Major Abdussalam Ahmed Jalloud in the beginning of October, 1980, had informed Mr. D. Cordovez, the envoy of the United Nations Secretary-General, that the agreement between Libya and Malta concerning the continental shelf will be submitted to the Peoples' Congresses in its final Session by the end of 1980 to look at the question of its ratification.

While the Popular Office of the Socialist People's Libyan Arab Jamahiriya conveys officially to your esteemed Ministry that the basic Peoples' Congresses have ratified the Treaty to be transferred to the International Court of Justice at The Hague, we would like to inform you that the coming step is to exchange the Documents of Ratification between the two Countries, thus the necessary procedures will be taken to transfer the dispute to the International Court of Justice. Therefore, the People's Foreign Liaison Bureau (Tripoli) is ready now to exchange the above-mentioned documents either in Valletta, the capital of the Republic of Malta, or in Tripoli, the capital of the Libyan Jamahiriya, according to international traditions between countries.

In the meantime, the People's Foreign Liaison Bureau is ready to receive a Maltese delegation in Tripoli or to send a Libyan delegation to Valletta to finalize the exchange of these documents at a convenient time.

The Libyan Popular Office, as usual, avails itself of this opportunity which has put an end to the dispute between the two countries.

(Signed) [Illegible.]

Annex 74

PAGES 6 AND 7 OF UNITED NATIONS SECURITY COUNCIL DOCUMENT S/PV2294, 30 JULY 1981

The Secretary-General: After the submission last November of my report to the Security Council on the mission of my representative to Malta and to the Libyan Arab Jamahiriya, contained in document S/14256, on 14 January of this year I received a letter from the Chargé d'affaires of Libya, contained in document S/14331, informing me that the Basic People's Congresses had decided to ratify the special agreement signed by the two parties in 1976 and to submit the delimitation case to the International Court of Justice, provided that no drilling in the disputed area was allowed until the Court had reached its decision.

Since that time my representative and I have maintained close contact with both parties with a view to assisting them in finalizing the exchange of instruments of ratification and the joint notification to the Court as provided for in the special agreement.

In late March, following my representative's suggestions, a delegation from Libya visited Malta for the purpose of concluding those formalities. Discussions between the parties were held, but they were inconclusive and subsequent efforts to conclude the pending formalities have not so far borne fruit.

Malta has taken the position that the presence in the instrument of ratification presented by Libya of what it considers to be implicit conditions regarding the question of drilling is unacceptable. Libya for its part has stated that its instrument of ratification, while referring to the People's Congresses as the highest authority which is competent to ratify international agreements, does not contain any conditions or any additions or amendments to the special agreement.

A number of communications addressed by the two parties in this connection to the President of the Security Council or to myself have been circulated as documents of the Council. In a letter addressed to me on 2 July the Chargé d'affaires of Malta reiterated his Government's position that the instruments of ratification could not contain any conditions and requested me to ascertain whether Libya would be prepared to give an assurance to that effect. On that occasion, however, Malta also stated that the question of whether either side would drill in the disputed areas while the case was pending before the Court was a separate legal issue on which the two parties were entitled to have and even express different views.

I immediately conveyed this information to the Libyan side and also urged the parties to try again to overcome the obstacles and to conclude the formalities. My representative suggested to the parties that, on the basis of Malta's statement on the question of drilling, procedural ways and means could be found to overcome the difficulties that had arisen.

In a letter addressed to my representative on 15 July Libya reiterated its position on the pending questions, expressed the view that the existing obstacles were essentially procedural and further expressed its readiness to send a special envoy to Malta with a view to eliminating those obstacles and facilitating existing efforts. That message was immediately conveyed to Malta. The Government of Malta accepted the visit of a special envoy in a letter dated 17 July 1981.

I was informed that, following those exchanges, a special envoy of Libya was scheduled to visit Malta on 19 July. Certain misunderstandings apparently ensued concerning the actual intentions behind the meeting. Malta then requested the convening of a meeting of the Security Council and that request is contained in document S/14595.

In the meantime I renewed my appeal to the parties to give the consultations a chance, and a delegation from Libya arrived in Malta on 23 July. I was informed that the special envoy of Libya and the Foreign Secretary of Malta held meetings on 27 and 28 July. On 28 July the Chargé d'affaires of Malta informed my representative that the meeting had been inconclusive and that the Libyan special envoy had returned to Tripoli. The Libyan Chargé d'affaires said that at the meeting the parties had considered various alternatives for resolving the pending issues. He added that the special envoy had returned to Tripoli for the purpose of holding consultations and that he intended to return to Malta for further discussions.

I shall not fail to continue to follow the situation carefully and shall remain in contact with the parties. I trust that the two sides will make renewed efforts in order to overcome the existing difficulties.

The President (interpretation from French): The first speaker on my list is the representative of Malta on whom I now call.

Annex 75

UNITED NATIONS SECURITY COUNCIL DOCUMENT S/14786, 9 DECEMBER 1981

NOTE BY THE SECRETARY-GENERAL

In a letter dated 8 December 1981 (S/14782), the Permanent Representative of Malta made a number of references to the report of the Special Representative of the Secretary-General, which the Secretary-General submitted to the President of the Security Council under cover of a letter dated 1 December 1981.

In view of the fact that the Permanent Representative of Malta has requested circulation of this letter as a Security Council document, the Secretary-General is making available, with the concurrence of the President of the Council, the report of his Special Representative in the same manner.

Annex

REPORT OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON THE DISPUTE BETWEEN MALTA AND THE LIBYAN ARAB JAMAHIRIYA

1. The members of the Security Council will recall that the dispute between the Republic of Malta and the Socialist People's Arab Jamahiriya derives from the absence of delimitation of the continental shelf between the two countries. The question has been under discussion since 1972, and in May 1976 the parties signed a Special Agreement to submit the case to the International Court of Justice. Malta ratified the Special Agreement shortly thereafter. Libya did not do so, but has pointed out in this connection that, after the Special Agreement was signed, the parties held further negotiations on matters concerning the Agreement and the dispute, including the drilling issue.

2. During my visit to Tripoli in November 1980, Libya undertook unconditionally to submit the Special Agreement to the Popular Congresses for ratification during the session which was then in progress "with a view to exchanging the instruments of ratification and formulating the joint notification to the Registrar of the International Court of Justice, as provided for in Article IV of the Agreement, during the first two weeks of December 1980" (see S/14256, para. 5).

3. In view of the fact that questions have been subsequently raised regarding the nature of that undertaking, Libya has underlined on several occasions that the commitment it gave was to submit without conditions the Special Agreement to the Popular Congresses, which alone have the constitutional authority to ratify it. Libya has stated that that undertaking was in fact honoured. It informed me that, following consideration of the matter, which took longer than originally envisaged, the Popular Congresses decided on 4 January 1981 to ratify the Special Agreement. The actual text of the decision, which was recently transmitted to me, reads as follows:

> "The Basic People's Congresses hereby decide to ratify the Special Agreement between the Socialist People's Libyan Arab Jamahiriya and the

> Republic of Malta for the submission of the dispute concerning the continental shelf to the International Court of Justice, provided that drilling in the disputed area shall not be permitted until after the International Court of Justice concludes its examination of the case."

4. Libya has stressed that this decision is in line with its consistent position on that issue. I was informed that its executive authorities accordingly prepared the instrument of ratification, which, in its approved translation, reads as follows:

> "I, Abdulati El-Obeidi, Secretary of the People's Committee of the People's Bureau for Foreign Liaison . . .,
>
> In accordance with the resolutions and recommendations of the People's Congresses, . . . whereby they approved the Agreement . . .,
>
> Do hereby proclaim the ratification by the Socialist People's Libyan Arab Jamahiriya of the above-mentioned Agreement."

5. Malta formally objected to Libya's instrument of ratification on the grounds that it contains an implicit condition to ratification and requested that the reference to the decision of the People's Congresses be deleted. It also proposed that the exchange of ratifications and the joint notification to the International Court of Justice be concluded simultaneously so that the necessary formalities could be completed without further delay. Malta has repeatedly said that the delay in the submission of the delimitation case to the Court has caused it serious economic and financial difficulties and made more imperative its need to explore offshore oil resources.

6. Libya has stated that the form of its instrument of ratification, including the reference to the source of authority for such action, is legally correct, consistent with both common international practice and the constitutional procedures of Libya, and is, in any event, a purely internal matter for Libya to decide. Libya did point out, in a note verbale addressed to the Government of Malta on 24 March 1981, that its instrument of ratification does not contain any additions or amendments to the Special Agreement. It has expressed the view in this connection that what Malta regards as a condition regarding drilling is inherent to the nature of the dispute and consistent with the spirit and content of the Special Agreement whether or not it is stated as a condition. As regards the procedure for concluding the formalities, Libya took the position that the exchange of ratifications and joint notification to the Court are separate legal procedures to be taken step by step by different authorities in Libya. Libya has consistently rejected the charge that it was responsible for the delay in submitting the matter to the Court, and reiterated that it was prepared to meet with Malta at any time to exchange ratifications.

7. The positions of the parties—as summarized above—were expressed in the context of the efforts that the Secretary-General and I made, following the ratification of the Special Agreement by Libya, to assist them in the conclusion of the formalities required for the submission of the delimitation case to the International Court of Justice. At my suggestion two meetings were held by the parties for that purpose in Valletta, in March and in July of this year, both of which proved inconclusive. Malta then made a further appeal to the Security Council, at which time the Council, on the basis of informal consultations, requested that the Secretary-General's Special Representative should "once again get in touch with the two Governments in the manner he deems most appropriate, with a view to assisting them find a mutually acceptable solution at an early date".

8. The first steps taken in pursuance of that request were outlined in the

Secretary-General's letter to the President of the Security Council of 30 October 1981. Since that date further intensive consultations were held with the parties, followed by a proposal that I should travel to Tripoli and Valletta from 21 to 25 November and that a third meeting be held by the parties in Valletta with the participation of the Special Representative of the Secretary-General. I was subsequently informed that it was not possible for the Libyan authorities to receive me on those dates but that I would be welcomed in early December. Libya has expressed its readiness to hold the proposed meeting in Valletta. The Government of Malta, while expressing the view that the proposed visit would not produce the desired results because it was convinced that Libya would not modify its position, agreed to my visit. It asserted that a meeting of the parties should be held only if Libya notified me of its intention to modify its instrument of ratification. Malta formally requested that I conclude my consultations with the parties before the end of November.

9. All the discussions so far held with the parties have proved beyond doubt that the crux of the problem that has prevented them from moving forward to conclude the formalities for the submission of the matter to the Court is the lack of agreement on the right of either party to drill in the disputed area pending a decision of the Court. My efforts in the latest phase were accordingly focused on the development of arrangements designed to enable the parties to overcome the obstacle which had arisen when Libya's instrument of ratification was communicated to Malta.

10. It may be noted, in that context, that on 2 July 1981, having reiterated that the instruments of ratification should not contain any condition, Malta had stated that the question whether either side could drill in the disputed areas while the case was pending before the Court was a separate legal issue on which the two parties were entitled to have—and even express—different views. The Secretary-General brought that statement to the attention of the Security Council, and expressed the view that, on that basis, it might be possible to find procedural ways and means to settle the issue.

11. Sustained attempts have been made to develop such procedural arrangements, including a suggestion which would have enabled the parties to place on record their respective legal positions on the question of drilling in conjunction with, but not as a part of, the exchange of ratifications. It is evident that both sides are reluctant to take any step which might have the effect of prejudicing their respective positions on the broader question of the delimitation of the continental shelf. The considerations invoked by the parties involve complex questions of legal doctrine which at this very moment are the subject of international efforts towards elucidation and codification. The basic positions of the parties have remained parallel and unchanged.

12. Throughout the consultations Libya stressed that the frequency and provocative character of the public communications addressed by Malta to the Security Council were not conducive to the atmosphere of goodwill required to facilitate the settlement of the outstanding issue. Malta, recalling the incident which took place on 20 August 1980, emphasized that it felt threatened with the use of force, a threat which in its view put in danger the peace and security not only of Malta but of the entire region.

13. While the clarifications which have been obtained confirm the divergent positions of the parties as to the question of drilling in the disputed area, they do not indicate any departure by either party from its intention formally to submit the dispute over the delimitation of the continental shelf to the International Court of Justice. It no longer appears possible, however, to overcome the specific problem that has arisen on the basis of mere procedural arrangements:

Malta has made it abundantly clear that it cannot proceed to the exchange of ratifications as long as, in its view, Libya's instrument contains a reference to a condition regarding drilling, no matter how implicit or indirect that reference may be. Libya has stated with equal clarity that it cannot agree to amend its instrument of ratification.

14. In the circumstances, one possible course of action that the parties might wish to consider in order to settle the question of interim drilling in disputed areas would be to request the Court, in conjunction with the submission of the delimitation case, to indicate, as a matter of priority under the terms of Article 41 of its Statute, "any provisional measures which ought to be taken to preserve the respective rights of either party". This would avoid further delays in the efforts to settle the dispute. At the same time, by submitting the issue of interim drilling to the highest judicial organ of the United Nations, to which the parties have agreed to entrust the larger question of the delimitation of their continental shelf, they would ensure that their legal positions will be consistently safeguarded until the dispute is definitively resolved.

Annex 76

PROCÈS-VERBAL OF 20 MARCH 1982

[Arabic text not reproduced]

PROCÈS-VERBAL CONCERNING THE REGISTRATION WITH THE SECRETARIAT OF THE UNITED NATIONS OF THE SPECIAL AGREEMENT BETWEEN THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA AND THE REPUBLIC OF MALTA FOR THE SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE OF DIFFERENCE AND THE NOTIFICATION OF THE SAID AGREEMENT TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

On 25 Jumadi al-Ula 1391 P.D. corresponding to 20th March 1982, in Valletta, Mr. Abdulati Ibrahim el-Obeidi, Secretary of the Popular Committee of the Popular Bureau for Foreign Liaison in the Socialist People's Libyan Arab Jamahiriya, and Dr. Alex Sceberras Trigona, Minister for Foreign Affairs of the Republic of Malta, agreed as follows:

(a) The Special Agreement between the two countries for the submission to the International Court of Justice of Difference signed in Valletta on 24 Jumadi al-Ula 1396 H corresponding to 23rd May 1976 will be registered with the Secretariat of the United Nations through their respective missions in New York, according to Article 102 of the Charter, within a month of the date of signature of this Procès-Verbale; and

(b) The joint notification of same Agreement to the Registrar of the International Court of Justice will be effected jointly by their respective agents in accordance with Article IV of that Agreement on 6 Shawal 1391 P.D. corresponding to July 26, 1982, in the terms of the draft joint notification attached to this Procès-Verbale.

In confirmation to the above, both sides signed this Procès-Verbale in two originals in the Arabic and English Languages, both texts being equally authentic.

(Signed) Abdulati IBRAHIM EL-OBEIDI, Secretary of People's Committee of the Popular Bureau for Foreign Liaison.	*(Signed)* Alex SCEBERRAS TRIGONA, Minister of Foreign Affairs of the Republic of Malta.

Annex 77

Special Agreements in the *North Sea* Cases

[See North Sea Cases, I.C.J. Reports 1969, *pp. 6 and 7]*

Annex 78

Special Agreement in the *Anglo-French Arbitration*

[Not reproduced]

Annex 79

Special Agreement in the *Tunisia/Libya* Case; *(a)* English Version Provided by Libya; *(b)* Translation by the Registry of the French Version Provided by Tunisia

[See I.C.J. Pleadings, Continental Shelf (Tunisia/Libyan Arab Jamahiriya), *Vol. I, pp. 26-27, and* Continental Shelf (Tunisia/Libyan Arab Jamahiriya), I.C.J. Reports 1982, *pp. 21-22]*

Annex 80

Truman Proclamation No. 2667 of 28 September 1945

[Not reproduced]

Annex 81

1958 CONVENTION ON THE CONTINENTAL SHELF

[Not reproduced]

Annex 82

PART VI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

[Not reproduced]

Annex 83

PAGE 334 OF VALLAT, "THE CONTINENTAL SHELF"

[Not reproduced]

Annex 84

PAGE 146 OF WALDOCK, "THE LEGAL BASIS OF CLAIMS TO THE CONTINENTAL SHELF"

[Not reproduced]

Annex 85

PAGE 261 OF THE *INTER-AMERICAN JURIDICAL YEARBOOK, 1955-1957*

[Not reproduced]

Annex 86

PAGE 108 OF GARCÍA AMADOR, *THE EXPLOITATION AND CONSERVATION OF THE RESOURCES OF THE SEA*

[Not reproduced]

Annex 87

PAGES 117 AND 118 OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, *OFFICIAL RECORDS*, VOL. III

[Not reproduced]

Annex 88

PAGE 162 OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, *OFFICIAL RECORDS*, VOL. IV

[Not reproduced]

Annex 89

PAGES 77 TO 79 OF THE *YEARBOOK OF THE INTERNATIONAL LAW COMMISSION, 1953*, VOL. II

[Not reproduced]

Annex 90

PAGES 216 OF THE *YEARBOOK OF THE INTERNATIONAL LAW COMMISSION, 1953*, VOL. II

[Not reproduced]

Annex 91

PAGE 95 OF THE UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, *OFFICIAL RECORDS*, VOL. VI

[Not reproduced]

Annex 92

PAGES 2 TO 4 OF *LIMITS IN THE SEAS*, NO. 10, REVISED

[Not reproduced]

Annex 93

Annex II to *Limits in the Seas*, No. 87

[Not reproduced]

Annex 94

Pages 145 and 146 of the *Australian Year Book of International Law 1970-1973*

[Not reproduced]

Annex 95

Pages 394 and 395 of *Japan Quarterly*, 1977

[Not reproduced]

Annex 96

Page 41 of the *Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction*, Vol. III

[Not reproduced]

Annex 97

Pages 232 and 233 of the Third United Nations Conference on the Law of the Sea, *Official Records*, Vol. III

[Not reproduced]

Annex 98

PAGES 170 AND 171 OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, *OFFICIAL RECORDS*, VOL. IV

[Not reproduced]

Annex 99

PAGE 48 OF UNITED NATIONS DOCUMENT A/CONF.62/122, 7 OCTOBER 1982

[Not reproduced]

Annex 100

(a) ARTICLE 6 OF THE 1958 CONVENTION ON THE CONTINENTAL SHELF ; *(b)* THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

Article 70 : Document A/CONF.62/WP.8/Part II, 7 May 1975
Article 71 : Document A/CONF.62/WP.8/Rev.1/Part II, 6 May 1976
Article 83 : Document A/CONF.62/WP.10, 15 July 1977 ;
Document A/CONF.62/WP.10/Rev.1, 28 April 1979 ;
Document A/CONF.62/WP.10/Rev.2, 11 April 1980 ;
Document A/CONF.62/WP.10/Rev.3, 22 September 1980 ;
Document A/CONF.62/L.78, 28 August 1981 ;
Document A/CONF.62/122, 7 October 1982

[Not reproduced]

Annex 101

PAGES 227-228 AND 245-246 OF CASTON, "THE QUATERNARY SEDIMENTS OF THE NORTH SEA"

[Not reproduced]

Annex 102

PAGES 67 TO 71 OF HAMILTON AND SMITH, "THE ORIGIN AND SEDIMENTARY HISTORY OF THE HURD DEEP, ENGLISH CHANNEL, WITH ADDITIONAL NOTES ON OTHER DEEPS IN THE WESTERN ENGLISH CHANNEL"

[Not reproduced]

Annex 103

PAGES 79 TO 83 OF *ATLANTE DEI CONFINI SOTTOMARINI*

[Not reproduced]

Annex 104

MAP PRESENTED BY MR. E. LAUTERPACHT, Q.C., DURING THE ORAL HEARINGS IN THE *TUNISIA/LIBYA* CASE, REQUEST BY MALTA TO INTERVENE

[*See* I.C.J. Pleadings, Continental Shelf (Tunisia/Libyan Arab Jamahiriya), *Vol. VI, Map No. 95]*

Annex 105

PAGES 89 TO 91 OF *ATLANTE DEI CONFINI SOTTOMARINI*

[Not reproduced]

Annex 106

MAP NO. 3 TO THE 1982 JUDGMENT IN THE *TUNISIA/LIBYA* CASE

[*See* Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982, *p. 90]*

Annex 107

CERTIFICATION

I, the undersigned, Abdelrazeg El-Murtadi Suleiman, Agent of the Socialist People's Libyan Arab Jamahiriya, hereby certify that the copy of each document attached as a Documentary Annex in Volume II of the Memorial submitted by the Socialist People's Libyan Arab Jamahiriya is an accurate copy; and that all translations are accurate translations.

(Signed) Abdelrazeg EL-MURTADI SULEIMAN,
Agent of the Socialist People's
Libyan Arab Jamahiriya.

MEMORIAL OF MALTA

MÉMOIRE DE MALTE

VOLUME I

INTRODUCTION

1. This is the Memorial of the Government of the Republic of Malta (hereinafter called Malta) filed pursuant to the Order of the Court made on 27 July 1982.

2. The present proceedings are being conducted on the basis of the Special Agreement concluded between Malta and the Socialist People's Libyan Arab Jamahiriya (hereinafter called Libya) concluded on 23 May 1976. Ratifications were exchanged on 20 March 1982 and the Agreement was notified to the Court jointly by the Parties on 26 July 1982 by a letter dated 19 July 1982.

3. The English text of the Special Agreement is as follows:–

> "The Government of the Republic of Malta and the Government of the Libyan Arab Republic agree to recourse to the International Court of Justice as follows:
>
> ### *Article I*
>
> The Court is requested to decide the following question:
>
> What principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic, and how in practice such principles and rules can be applied by the two Parties in this particular case in order that they may without difficulty delimit such areas by an agreement as provided in Article III.
>
> ### *Article II*
>
> (1) The proceedings shall consist of written pleadings and oral hearings.
>
> (2) Without prejudice to any question of the burden of proof, the written pleadings shall consist of the following documents:
>
> (*a*) Memorials to be submitted simultaneously to the Court by each Party and exchanged with one another within a period of nine months from the date of the notification of this Agreement to the Registrar of the Court.
>
> (*b*) Replies to be similarly submitted to the Court by each Party and exchanged with one another within four months

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after the date of the submissions of the Memorials to the Registrar.

(c) Additional written pleadings may be presented and exchanged in the same manner within periods which shall be fixed by the Court at the request of one of the Parties, or if the Court so decides after consultation with the two Parties.

(3) The question of the order of speaking at the oral hearing shall be decided by mutual agreement between the parties but in all cases the order of speaking adopted shall be without prejudice to any question of the burden of proof.

Article III

Following the final decision of the International Court of Justice, the Government of the Republic of Malta and the Government of the Libyan Arab Republic shall enter into negotiations for determining the area of their respective continental shelves and for concluding an agreement for that purpose in accordance with the decision of the Court.

Article IV

This Agreement shall enter into force on the date of exchange of instruments of ratification by the two Governments, and shall be notified jointly to the Registrar of the Court.

Done in two originals at Valletta, Malta this 23rd day of May, 1976 corresponding to 24th 1396 H in the English and Arabic languages both texts being equally authentic."

IMPORTANCE TO MALTA OF THE PRESENT CASE

4. At the very outset, it is right that Malta should emphasize the particular importance which this case has for her. Though some of the details will be repeated later within the framework of the systematic exposition of the geographical, economic and geological circumstances of the Parties, it must be stated without delay that the present case is really about access to resources. For Malta, such access is vital. Within her limited territory (less than 320 sq. kms.), supporting a population of 320,000 persons, there are no natural resources whatever. Surveys and explorations indicated that there is no prospect of finding such resources onshore. Accordingly, it is to the sea that Malta must turn. And in terms of significant economic support, it is with the mineral resources of the continental shelf that Malta must be concerned. The investigations so far carried out suggest that the most promising areas for the discovery and production of oil lie in or near the regions of Malta's southern equidistance line. Although there are also other cogent reasons, this is the fundamental reality which underlies Malta's opposition to Libya's assertion of rights north of that equidistance line.

5. This aspect of the matter might be less striking if Libya were a State in the same economic position as Malta. But this is evidently not so. It may be helpful to bear in mind in this connection (to take but one relevant economic indicator) that in 1980 the revenue of Libya from oil production was some US$ 23 billion.

6. The members of the United Nations have given frequent and explicit recognition to the status of Malta as an "island developing country". The concept has a specific content which has been repeatedly and unanimously recognised in resolutions of the UN General Assembly and of the United Nations Conference on Trade and Development. The concept stands for acknowledgment by the international community that there exists a substantial group of island States whose condition of economic development is such that, at the very least, nothing must be done which would contribute to worsening it.

PART I

THE TASK OF THE COURT

THE TASK OF THE COURT

7. Article I of the Special Agreement requests the Court

> "to decide the following question:
>
> [i][1] What principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic, and [ii][1] how in practice such principles and rules can be applied by the two Parties in this particular case in order that they may without difficulty delimit such areas by an agreement as provided in Article III".

8. Article III provides that following the final decision of the Court the Parties.

> "shall enter into negotiations for determining the area of their respective continental shelves and for concluding an agreement for that purpose in accordance with the decision of the Court".

9. It will at the outset be necessary for the Court to determine in the light of these provisions what task the Parties have asked it to perform; and it is to this matter that Malta will direct its first submissions.

10. The Court has recently, in the *Continental Shelf (Tunisia–Libyan Arab Jamahiriya)* case[2], had occasion to interpret and apply a special agreement similar to the Special Agreement in the present case. It is true that the Special Agreement in the *Tunisia–Libya* case was concluded on 10 June 1977, that is, just over a year after the Special Agreement in this case. Accordingly, there can be no suggestion that the draftsmen of the Special Agreement in the present case could in any way have had in mind the Special Agreement in the *Tunisia–Libya* case. But the fact that the Court has now interpreted a number of closely similar provisions in the *Tunisia–Libya* Special Agreement means that special attention must be given to that interpretation in the present case.

11. Article 1 of the *Tunisia–Libya* Special Agreement, in the translation used by the Court[3], requested the Court to state:

> "What principles and rules of international law may be applied for the delimitation of the area of the continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and [of][4] the area of

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[1] The numbers in square brackets have been inserted for ease of reference later.

[2] *I.C.J. Reports 1982*, p. 18 (hereinafter called "the *Tunisia–Libya* case" or "the *Tunisia–Libya* judgment", as circumstances may require).

[3] *Ibid.*, p. 37, para. 22.

[4] The English text of the Agreement as printed in *I.C.J. Reports 1982*, at p. 23 here uses the word "to" – which seems likely to be a misprint (cf. the French text, "de").

the continental shelf appertaining to the Republic of Tunisia, and the Court shall take its decision according to equitable principles, and the relevant circumstances which characterize the area, as well as the new accepted trends in the Third Conference on the Law of the Sea.

"Also, the Court is further requested to clarify the practical method for the application of these principles and rules in this specific situation, so as to enable the experts of the two countries to delimit these areas without any difficulties."

12. In addition, Article 2 provided that:

> "Following the delivery of the Judgment of the Court, the two Parties shall meet to apply these principles and rules in order to determine the line of delimitation of the area of the continental shelf appertaining to each of the two countries, with a view to the conclusion of a treaty in this respect."

13. Point [i][1] of Article I of the *Libya–Malta* Special Agreement can thus be seen to be almost the same as the first paragraph of Article 1 of the *Tunisia–Libya* Special Agreement with the exception that the latter agreement contains an additional element, namely, the request to the Court that it take its decision

> "according to equitable principles, and the relevant circumstances which characterize the area, as well as the new accepted trends in the Third Conference on the Law of the Sea".

14. It is appropriate therefore to note the manner in which the Court in the *Tunisia–Libya* judgment interpreted the first paragraph of Article I. On this topic the Court said[2]:

> "The Court is specifically called upon, in rendering its decision, to take account of the following three factors, expressly mentioned in the Special Agreement: (a) equitable principles; (b) the relevant circumstances which characterize the area; and (c) the new accepted trends in the Third United Nations Conference on the Law of the Sea. While the Court is, of course, bound to have regard to all the legal sources specified in Article 38, paragraph 1, of the Statute of the Court in determining the relevant principles and rules applicable to the delimitation, it is also bound, in accordance with paragraph 1 (a) of that Article, to apply the provisions of the Special Agreement. Two of the three factors referred to are, however, in complete harmony with the jurisprudence of the Court, as appears from its Judgment in the *North Sea Continental Shelf* cases in which it held that international law required delimitation to be effected 'in accordance

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[1] See above, para. 7.

[2] *I.C.J. Reports 1982*, p. 37, para. 23.

> with equitable principles, and taking account of all the relevant circumstances' *(I.C.J. Reports 1969*, p. 53, para. 101 (c) (1)) – With regard to the third, the 'new accepted trends' the Court would recall what it had to say on the subject of the work of the Third United Nations Conference on the Law of the Sea in the *Fisheries Jurisdiction* cases *(I.C.J. Reports 1974*, p. 23, para. 53, and p. 192, para. 45)[1]. It must however note that the law making process in this respect has now progressed much further."

With regard to the third factor, the Court further observed that[2]

> "... it does not appear that it was their (the Parties') intention to go so far as to impose additional or supplementary rules on themselves in this way in the context of this case".

15. From the passages just cited, Malta derives the following conclusions:

(1) The requirement of recourse to "principles and rules of international law" applicable to the delimitation of the continental shelf in the *Tunisia-Libya* Special Agreement was construed by the Court as a reference to the Court's own decision in the *North Sea Continental Shelf* cases to the effect that international law required delimitation to be effected in accordance with equitable principles and taking account of all the relevant circumstances. This conclusion is confirmed by the later statement of the Court in the *Tunisia-Libya* case[3]:

> "The Court has thus examined the question of equitable principles which, besides being mentioned in the Special Agreement as the first of the three factors to be taken into account, are, as the Court has emphasized, of primordial importance in the delimitation of the continental shelf".

(2) The same interpretation should be attached to point [i] in Article I of the *Libya-Malta* Special Agreement.

16. In general, though subject to some significant qualification, the law applied in the *Tunisia-Libya* case is applicable in the present case. The reference in the *Tunisia-Libya* Special Agreement to the three additional factors does not really set that Agreement apart because, as indicated above, the Court considered that the first two factors are in any event part of the relevant international law and the third (the reference to "new trends") was not interpreted by the Parties as requiring the Court to

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[1] These paragraphs concluded with the statement: "In the circumstances, the Court, as a court of law, cannot render judgment *sub specie legis ferendae*, or anticipate the law before the legislator has laid it down".

[2] *I.C.J. Reports 1982*, p. 38, para. 24.

[3] *Ibid.*, p. 60, para. 72.

apply any rules or concepts that were not already part of international law.

17. Malta will presently examine in more detail the meaning of "equitable principles" and of "relevant circumstances" as they are to be applied to the present case.

18. The other respect in which the interpretation and application by the Court of the *Tunisia–Libya* Special Agreement has a direct bearing on the *Libya–Malta* Special Agreement is that of the practical application of the principles and rules which the Court identifies as applicable to the substantive problem. As set out more fully in paragraph 11 above, the *Tunisia–Libya* Special Agreement requested the Court "to clarify the practical method for the application of principles and rules in this specific situation", while the *Libya–Malta* Special Agreement requests the Court to decide "how in practice such principles and rules can be applied by the two Parties in this particular case". In both Agreements the purpose of this clarification or decision is also expressed in almost parallel language: "so as to enable the experts of the two countries to delimit these areas without any difficulties" (*Tunisia–Libya*) and "in order that they [the Parties] may without difficulty delimit such areas by an agreement as provided in Article III" (*Libya–Malta*).

19. As to this aspect of the *Tunisia–Libya* case, the Court, after noting some difference of view between the Parties, said:[1]

> "The Court, therefore, considers the whole controversy as of minor importance, *since it has in any case to be precise as to what it decides*, and cannot agree with the repeated reference of Libya to 'guidance' as defining the requirement of what the Court should specify".

20. With reference to the provision in Article 2 of the *Tunisia–Libya* Special Agreement, of which the corresponding part of the *Libya–Malta* Special Agreement is Article III, the Court said:[2]

> "The Court's view is that, at that stage, there will be no need for negotiation between experts of the Parties regarding the factors to be taken into account in their calculations, since the Court will have determined that matter. The only task remaining will be the technical one making possible the drafting of the treaty incorporating the result of the work by the experts . . .".

21. The Court added to this explanation that[3]:

> " . . . the fact that the Parties have reserved for themselves the determination, by treaty, of the boundary delimiting the two continental shelf areas, does not prevent the Court from indicating the

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[1] *Ibid.*, p. 40, para. 29 (emphasis supplied).

[2] *Ibid.*, p. 40, para. 30.

[3] *Ibid.*, p. 78, para. 108.

> boundary which, in its view, would result from the application of such method as the Court may choose for the Parties to achieve the relevant determination".

22. Malta concludes that in the present case the task of the Court is to identify the principles and rules of international law applicable to the delimitation of the continental shelves of the two Parties with effectively the same degree of particularity as those principles were identified in the *Tunisia–Libya* judgment. The Court should indicate the boundary which, in its view, would result from the application of such method as the Court may choose for the Parties to achieve the relevant determination.

PART II

THE FACTS

CHAPTER I

GEOGRAPHICAL, ECONOMIC AND GEOLOGICAL BACKGROUND

1. MALTA

(1) *General and Economic*

23. As an island State, Malta is one of some thirty-eight such States. In an international community consisting of some one hundred and fifty four states, island States thus represent a constituent element amounting to virtually 25%.[1] In addition there is a considerable number of islands or group of islands which have the status of associated States or are more or less self-governing dependencies, and of which many may in the future become independent.

24. Every one of these island States possesses a continental shelf and exclusive economic zone rights and many are in a situation in which they may have delimitation problems with opposite or adjacent States. Thus the position of Malta as island State, as opposed to being merely an island, is neither unique nor even rare.

25. Malta is an archipelago consisting of three main islands: Malta, Comino and Gozo. They are aligned on a NW – SE axis. The NW tip of Gozo lies approximately 43 nautical miles (79 kms) south of the nearest point on the coast of Sicily. The SE tip of Malta lies approximately 183 nautical miles (340 kms) north of the nearest point on the coast of Libya. The superficial area of the three islands is 316 sq. kms. The population of the three islands totals 320,000.

26. The economy of Malta is based upon manufacturing, ship repair, agriculture, fisheries and tourism.

27. There are no natural resources in Malta. Mineral surveys and oil exploration have been carried out, but nothing has been found. Offshore Malta, exploration has been carried out in the area of continental shelf.[2] No traces of oil or gas have been found. Exploration at a potentially promising point,[3] was forcibly prevented by Libya in 1980.[4]

28. It may be noted in passing that Malta's lack of resources is neither "variable" nor "unpredictable" (to use the words of the Court's judgment

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[1] While there may be debate as to the precise definition of an island State, the following are States which occasion an island situation:
Antigua and Barbuda, Bahamas, Bahrain, Barbados, Cape Verde, Comoros, Cuba, Cyprus, Dominica, Dominican Republic, Fiji, Grenada, Haiti, Iceland, Indonesia, Ireland, Jamaica, Republic of Kiribati, Madagascar, Maldives, Malta, Mauritius, Nauru, New Zealand, Papua New Guinea, the Philippines, St. Lucia, St. Vincent and the Grenadines, Sao Tome, Seychelles, Singapore, Solomon Islands, Sri Lanka, Tonga, Trinidad and Tobago, Tuvalu, Vanuatu, Western Samoa.

[2] See Volume III Map 1.

[3] The point is marked X on Map 1.

[4] See below, para. 104.

in the *Tunisia–Libya* case when referring to the relevance of economic considerations.[1] Every attempt has been made to seek valuable economic resources on Malta's territory and none has been successful. Without access to the possible oil deposits in the sea-bed, there is no basis for any suggestion that Malta may "become rich tomorrow".[2]

29. In the context of the interest of the United Nations in "developing island States", Malta has been placed within this category, where it is classified as "small" in terms of area and "very small" in terms of size of population.[3]

(2) *Extent of the Territorial Sea*

(i) *Width*

30. Prior to 1971, Malta claimed a 3-mile limit for the territorial sea. By Act No. XXXVI of 1971 (the 1971 Act), Malta extended its claim to territorial sea to six nautical miles. In 1978 this claim was extended to 12 nautical miles.

(ii) *Base-lines*

31. The 1971 Act provided in section 3(1) that the limits of the territorial sea should be "measured from low-water mark on the method of straight base-lines joining appropriate points". These straight lines link 26 points and enclose as internal waters the waters lying between the islands of Malta, Comino and Gozo.[4]

32. These lines were notified to Libya in July 1972 and were used when Malta set out the boundary for exploration licences in 1973.[5]

33. Malta has not as yet established an exclusive economic zone; but, of course, it has a right under international law to do so at any time.

(3) *The submarine areas appertaining to Malta*

34. On 19 May 1966 Malta became a party to the Geneva Convention on the Continental Shelf of 1958 and to the Optional Protocol on the Settlement of Disputes. In the exercise of her right under the Convention and under customary international law Malta then asserted her claim to her continental shelf in the form of the Continental Shelf Act, 1966.[6] The continental shelf was defined in section 2 as meaning

> "the seabed and subsoil of the submarine areas adjacent to the coast of Malta but outside territorial waters, to a depth of two hundred

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[1] *I.C.J. Reports 1982* p. 77, para. 107.

[2] *Ibid.*

[3] See below para. 228 (i).

[4] See Volume III Map 2.

[5] See below para. 35 and 63

[6] Act. No. XXXV, 1966; 28 July, 1966 (Annex 1).

metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; so however that where in relation to states of which the coast is opposite that of Malta it is necessary to determine the boundaries of the respective continental shelves, the boundary of the continental shelf shall be that determined by agreement between Malta and such other state or states or, in the absence of agreement, the median line, namely a line every point of which is equidistant from the nearest points of the baseline from which the breadth of territorial waters of Malta and of such other States is measured".

35. On 24 April 1973 a supplement to the Malta Government Gazette contained a Notice[1] inviting applications for production licences in the offshore area south of Malta. The area open to applications (which were to be filed by 2 August 1973) was identified on a map[2] referred to in the Notice and stated to be deposited at the Oil Division, Ministry of Development, Valletta and to be open to inspection there. This Notice, after listing the coordinates of the sixteen blocks opened for applications, stated that

> "The areas of Blocks 12, 13, 14, 15 and 16 are subject to alterations in the light of any agreement on the Median Line between Malta and the Libyan Arab Republic".

36. The southern boundaries of these blocks were laid down to coincide with the equidistance line between Malta and Libya. Those concession areas are set out in Volume III Map 3. Concessions were granted as follows:

Concessions	*Date of Grant*	*Oil Company*
Blocks 2, 3, 4 and 9	31 May 1974	Texaco Malta Inc.
Blocks 10, 11 and 14	31 October 1974	Joc Oil Ltd.
Block 16	19 November 1974	Aquitaine Malte S.A. et al.

Notices of the grant of these concessions were given shortly after they were made. The main facts concerning them were conveyed to the Maltese Parliament by the Government of Malta in Statements made, respectively, on 3 June 1974, 4 November 1974 and 25 November 1974. The concessions were also given publicity in the petroleum industry press.

37. As will be seen from Volume III Map 3 and the description of the concessions believed to have been granted by Libya, Blocks 2, 4, 9, 10, 11, 14 and 16, all of which lay north of the equidistance line, were overlapped

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[1] Annex 2.

[2] See Map attached to Annex 2.

by Libyan concession EL–NC 35A, granted by Libya to Exxon (Esso) in September 1974. It is believed that this concession was surrendered by Exxon in 1981. Libyan Concession EL–NC 35B, granted to Exxon in September 1974, while not overlapping with any existing Maltese concession, projects north of the equidistance line and, in its northwesterly corner, overlaps with Maltese Block 6, ungranted. This concession is also believed to have been surrendered by Exxon in 1981.

38. Additional concessions were granted by Malta to a consortium led by Reading and Bates Petroleum Co. in April 1981. These lie closer inshore, just to the west and south of Malta and Gozo.[1]

39. The whole area of Malta's continental shelf as encompassed by an equidistance line is approximately 60,000 sq. kms.

40. No territory lies due east of Malta until one reaches the Greek islands. The point may, therefore, be made straightaway that Malta's principal interest in the continental shelf lies in the area which falls for delimitation between it and Libya. Echoing the language of the Tribunal in the *Anglo–French Continental Shelf Arbitration*, and unlike the situation of the United Kingdom and France in that arbitration, there is no room to compensate Malta elsewhere for any adverse consequences of the delimitation with Libya. It is evident that no similar consideration applies to Libya.

(4) *Fisheries*

41. Some of the methods of fishing employed by Maltese fishermen have a bearing on the present case. The first is the method known as *Kannizzati*. Although it is used principally in relation to two species, *lampuki* and *fanfri*, which are migratory in habit and seasonal (July/August–December/January) in their appearance in the relevant waters, it is nonetheless the source of as much as 40% of the Maltese catch.

42. The method depends upon the inclination of the relevant species to gather in the shade of any object floating in the sea. Accordingly, the fishermen have developed a system of laying individual floats *(kannizzati)* to provide such shade. These used to be made of cork and would be held in place by a line tethered to a stone anchor resting on the sea-bottom. More recently, because of the cost and fragility of cork, the floats have come to be made of bundles of palm leaves. The fish collect in the shade of each *kannizzata* and are caught by a seine net which is thrown round the float.

43. In order to keep the series of *kannizzati* of one fisherman separate from those of others, the *kannizzati* are laid not at random but along predetermined lines at variable intervals. *Kannizzati* fishing is licensed and each licence states the "ground" within which the licence holder may set his line of floats. In practical terms, the "ground" is identified by the

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[1] See Volume III Map 3.

point at which the series of *kannizzati* begins. The licence holder is then entitled to run his series of floats as far seaward from that point as he cares to go. The end result is a pattern of lines comparable to the spokes of a wheel.

44. The relevance of the existence of this method of fishing is that individual series of *kannizzati* may stretch over an extended distance and many of them have for some years stretched as far as the equidistance line between Malta and Libya, and even beyond.

45. The method is one of considerable antiquity. Its existence was recognized in the first fishery regulations adopted by the Government of Malta in 1909. At that time the band within which each series of floats might be set was fixed at a width of three miles and the number of floats in each series was limited to twenty. Now the bands are not so wide. They are established by the fixing of a starting point and an indication of the bearing on which the series should run seaward. Map 4 in Volume III is a copy of the chart on which the starting points and bearings of the licensed *Kannizzati* lines have been marked by the licensing authority, the Director of Agriculture and Fisheries. Map 5 in Volume III is a chart showing the overall area within which *kannizzati* fishing has now developed with the advent of modern fishing boats. The outer limits of some lines of *kannizzati* are as much as 150 miles from their starting points. These lines remain in place throughout the season (July/August–December/January).

46. In addition, Maltese fishermen have used longline fishing for swordfish and tuna; and bottom longlining and trawling for bottom fish. Although the location of fishing banks is a closely guarded secret of individual fishermen, it is known that longlining has been going on in the Medina Bank and beyond, and that trawling grounds on the 100 and 200 fathom line in the south attract a sizeable number of craft in the winter months. Map 5 in Volume III also indicates the area within which trawling by Maltese fishermen takes place.

2. Libya

(1) *General and Economic*

47. The general and economic position of Libya is strikingly different from that of Malta.

48. Libya is one of the largest States in Africa, as can be seen from
① Map No. 1 in the Libyan Memorial (30 May 1980) in the *Tunisia–Libya* case. The area of this territory is 1.8 million sq. kms. (compared to Malta's 316 sq. kms.). Its coast stretches from Ras Ajdir, in the west, to near Port Bardia, in the east, a distance along a direct west-east line of approximately 1280 kms. and of actual coastline of about 1850 kms.

49. The population of Libya is 3.13 million (compared to Malta's 320,000).

50. The dominating feature of Libya's economy is the production and

sale of mineral products, mainly oil. The export value of this commodity in the years, 1976–1980 was (in U.S. dollars) as follows[1]:

1976	$ 8.3 billion
1977	$ 9.75 billion
1978	$ 9.5 billion
1979	$15.2 billion
1980	$22.5 billion

With these figures may be compared Malta's *total* exports (in U.S. dollars) in each of the same years[2]:

1976	$228.3 million
1977	$308.7 million
1978	$362.7 million
1979	$442.3 million
1980	$470.7 million

(2) *Offshore Areas*

51. The areas which Libya claims as continental shelf will no doubt be described in the Libyan Memorial in the present case.

52. Malta at this point restricts itself to noting that the area of Libya's continental shelf, calculated by reference to the *Tunisia–Libya* judgment, as between Libya and Tunisia, and by reference to the equidistance principle elsewhere, and constructed on the low water mark, is approximately 400,000 sq. kms. This is about seven times the size of the entire continental shelf claimed by Malta *vis-à-vis* all her neighbours on the basis of equidistance.

53. Libya has granted a number of concessions in the continental shelf north of the Libyan coast. Two of these, EL–NC 35A and EL–NC 35B, have already been mentioned as projecting north of the equidistance line and overlapping with concessions granted by Malta. A third EL–NC 87 was granted to Exxon in July 1977. This area lies south of the equidistance line, but touches it at its northeastern corner. These concessions are marked on Map 3 in Volume III.

3. The Geological Relationship Between the Two Countries

54. Malta lies about 340 km. (183 nautical miles) north of the Libyan mainland and approximately 80 km. (43 nautical miles) south of Sicily. To the west of Malta lies Tunisia at a distance of about 370 km. (200 nautical miles). Closer to the west, however, lie the Italian islands of Linosa, Lampedusa, Lampione and Pantelleria, at distances of 119 km.

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[1] *International Financial Statistics*, I.M.F., Dec., 1982.

[2] Official Statistics. The figures given include re-exports.

(64 n. miles), 152 km. (82 n. miles), 177 km. (96 n. miles) and 205 km. (111 n. miles), respectively, from the nearest point in Gozo.

55. The islands constituting Malta are emergent parts of the Maltese plateau (sometimes called Ibleo-Malta Plateau) which extends over a much greater submarine area than that suggested by their position.

56. The seafloor between Malta and Libya exhibits a generally east-west or northwest-southeast trending relief. Broadly to the south of Malta are a series of deep troughs reaching over 1000 m. in depth known geologically as the Pantelleria and Linosa graben (also known as "Fosse de Malte", "Fosse de Linosa" and 'Chenal de Medina"). Mid-way between Malta and Libya is a broad shallow region, mostly less than 400 m. deep called the Plateaux of Melita and Medina. Geologically this is an elevated region bounded to the north and south by fault systems. Off the coast of Libya is a furrow running east-west called the Tripolitanian Furrow. In the *Libya-Tunisia Continental Shelf* case the Court took the view[1] that this "submarine valley does not display any really marked relief until it has run considerably further to the east than the area relevant to the delimitation".

57. The entire region south of Malta as far as the Libyan coast relevant to this case forms a continuous continental shelf. In the geological terminology of continental margins, no continental slopes descending to abyssal depths are found in this area.

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[1] *I.C.J. Reports 1982*, p. 57, para. 66.

CHAPTER II

MALTA'S NEUTRALITY

58. In order to complete what the Court of Arbitration in the Anglo-French *Continental Shelf Arbitration* has called "the legal framework within which the Court must decide the course of the boundary"[1] it is appropriate to bring to the notice of the Court that since 15 May 1981 Malta is a Neutral State. On that date a Declaration concerning the Neutrality of Malta made by the Government of Malta was approved by the Maltese Parliament. The Declaration defines the status of neutrality with regard, *inter alia*, to non-alignment, to foreign military bases, military facilities to foreign forces, the presence of foreign military personnel on Maltese territory and the use of the shipyards of Malta for the repair of military vessels.

59. This status of neutrality has been affirmatively received and recognized, or even guaranteed, in a variety of forms by Algeria, Bulgaria, China, the Commonwealth, the European Community, France, Greece, Guinea, Italy, the Democratic People's Republic of Korea, Libya, Morocco, the Non-Aligned Movement, Qatar, Saudi Arabia, Senegal, Tunisia, the USSR and Yugoslavia.

60. Although Malta's geographical position in the Mediterranean Sea is such that access to her territory for military purposes could be of great importance to any one of a number of States, Malta's declared[2] and widely recognized status of neutrality now excludes this possibility. Under this status Malta is barred from acquiescing in the presence of any foreign military base on Maltese territory or the provision of military facilities to any foreign forces save where necessary for the defence of Malta or in pursuance of measures decided by the Security Council of the United Nations. The use of the shipyards in Malta is limited to civil commercial purposes, to the repair of military vessels which have been put in a state of non-combat, and to the construction of vessels; and the use of the Maltese shipyards is completely denied to the military vessels of the two superpowers.

61. In economic terms this means that Malta cannot derive the considerable financial benefit that might otherwise accrue to it from payments connected with the use of her territory for or in connection with military bases.

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[1] Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 187.

[2] Annex 3.

CHAPTER III

HISTORY OF RELEVANT RELATIONS BETWEEN THE PARTIES

62. The question of the delimitation of the continental shelf between the Parties appears first to have been discussed in July 1972.

Meeting of 12–13 July 1972

63. At the meeting held in Malta between Libyan and Maltese delegations, Malta presented a draft agreement, accompanied by a map,[1] setting out in specific detail Malta's proposals for a boundary based on equidistance. The line was constructed on the basis of Malta's straight base-lines,[2] including the use of the island of Filfla as a base point, and of Libya's low-water mark line.

64. The Libyan delegation did not reject the principle of an equidistance line but questioned the use of Filfla as a base-point and indicated that they wanted the co-ordinates checked by their experts.

Meeting of 23 April 1973

65. On 23 April 1973 a further visit was paid to Malta by a delegation from Libya. The position of the Libyan delegation on this occasion was materially different from that adopted previously. Libya now came forward with a draft agreement proposing a line which paid no regard to equidistance but lay well to the north of Malta's proposed equidistance line.[3] Libya explained that this line had regard to the respective lengths of coastline of Libya and Malta, the length of the former being taken as extending from the Tunisian border to Misurata: in other words the distance between the two coastlines was divided in the same proportions that the two shorelines bore to each other.

Message from the Prime Minister of Malta to the Chairman of the Revolutionary Command Council of Libya, 23 April 1973

66. The terms of Libya's proposal led the Prime Minister of Malta immediately to communicate its unacceptability to Col. Gaddafi. At the same time, the Prime Minister of Malta proposed an urgent meeting between himself and the Prime Minister of Libya and concluded by indicating that

> "Meantime, it is now impossible for us to evade the commitments we have made with international oil companies and tenders are being called for with a provisional Median Line identical with the one which was submitted to your Government over a year ago."

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[1] Annex 4.

[2] See above, para. 31.

[3] Annex 5.

Meeting of 26 April 1973

67. A meeting was rapidly arranged in Tripoli between representatives of Malta and the Prime Minister of Libya at which each side restated its position – Malta, that of equidistance; Libya, that of proportionality.

Meeting of 3 July 1973

68. The next meeting, on 3 July 1973, was unproductive, with neither side bringing forward new proposals, each having expected the other to come with fresh suggestions. In the ensuing but inconsequential discussion Malta emphasized the full entitlement of sovereign island States.

Communication of legal memorandum by Malta to Libya, 27 November 1973

69. On 27 November 1973 Malta sent to Libya a memorandum to the effect that the use of a line of equidistance had been supported by Dr Rouhani and Dr Pachachi (both of whom had been Secretaries-General of OPEC) and had been confirmed in a legal opinion rendered by a firm of Norwegian lawyers.

Memorandum from Malta, 1 January 1974

70. On 1 January 1974 Malta sent Libya a memorandum recalling the urgency of Malta's need for a settlement of the continental shelf boundary and stressed Malta's economic needs. Libya did not respond.

Message from Malta, 25 March 1974

71. The urgency of the situation was again stated by the Prime Minister of Malta in a message to the Chairman of the Revolutionary Command Council on 25 March 1974.

Talks between Malta and Libya, 10 April 1974

72. A meeting took place between the Prime Minister of Malta and Mr Ben Amer, a Libyan Minister, on 10 April 1974 in which the Prime Minister again referred to the need not to lose time and recalled an earlier proposal that independent advice should be sought. Mr Ben Amer said that Libya had not accepted such a proposal and, in his turn, suggested that each side should abandon its position in favour of a compromise proposal. The Prime Minister replied that this was not acceptable. Both sides accepted the idea that a draft submission to arbitration should be prepared, including time limits so that the matter might be resolved promptly.

Agreement between Malta and Texaco Malta Inc., 31 May 1974

73. Eventually, Malta found itself in a position in which it could no longer delay the conclusion with Texaco Malta Inc. of an agreement for offshore oil exploration. On 31 May 1974 Texaco was granted exploration rights in Blocks 2, 3, 4 and 9 shown on Map 3 in Volume III. This

agreement was announced by the Prime Minister of Malta in Parliament on 3 June 1974. On 25 June 1974 the Embassy of Libya in Malta officially requested a copy of the Agreement. The request was refused on 27 June 1974, but a copy of the Prime Minister's summary of the agreement was sent to Libya. Libya subsequently reserved its position in general terms by a Note Verbale of 30 June 1974.

74. On 14 July 1974 Libya enquired as to the accuracy of a news item in the *Times of Malta* to the effect that a survey ship would be carrying out seismic tests for the next two months at a distance of 40 miles south of Malta. On 17 July 1974 Libya asked for a map showing the areas over which Texaco Malta was permitted to carry out exploration activities.

Malta's Note, 8 August 1974

75. Malta replied to the Libyan Note Verbale of 14 July 1974 on 8 August 1974, indicating where the seismic vessel had been operating, stating that the area was north of the equidistance line and explaining that this was why Malta could not accept the reservation made by Libya in its Note of 30 June 1974. Attached to the Note was a copy of Malta's Notice of 24 April 1973 inviting applications for exploration permits and of the map attached thereto.[1]

76. In this Note the Maltese Government also took the opportunity of recording that Malta could not accept or recognize Libya's claim to the Gulf of Sirte made in the previous September.

Libya's Warning Letters, 8 June 1975

77. For the next ten months little happened on either side: Malta's licensees conducted seismic surveys in their areas and Libya granted the concessions referred to in paragraph 37 above.

78. Then, on 8 June 1975 Libya addressed letters to the licensees of Malta stating that the areas granted to them fell within Libyan continental shelf, that no activities might be carried on there without Libya's permission and that unauthorized activities would justify "the adoption of any measures deemed necessary to safeguard our legitimate rights"[2].

Malta's Warning Letters, 17 and 23 June 1975

79. At about the same time Malta learned of the grant of concessions by Libya to Compagnie Des Pétroles Total (Libya) and to Exxon Corporation. On 17 and 23 June 1975 Malta sent warning letters[3] to these concessionaires requesting an assurance that operations would not be carried on in the area of Malta's continental shelf. As far as Malta is aware – and this is confirmed by the replies received from the Libyan concessionaires – no activities were carried out by them north of the equidistance line.

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[1] See Annex 2.

[2] Annexes 6, 7 and 8.

[3] Annexes 9 and 10.

The conclusion of the Special Agreement

80. Towards the end of 1975, Libya intimated to Malta that it would look favourably on Malta's suggestion that the dispute should be submitted to the International Court of Justice. Malta thereupon prepared a draft special agreement of which the principal feature was a request to the Court to draw the dividing line separating the continental shelf areas lying between Malta and Libya.[1] This draft was handed by the Prime Minister of Malta to Minister Ben Amer of Libya at a meeting in Tripoli on 3 January 1976.

81. On 27 January 1976 Libya forwarded to Malta the text of a Libyan draft.[2] This differed from the Maltese draft in limiting the task of the Court to a statement of the principles of international law to be applied to the determination of the continental shelf areas lying between the two countries and in requiring the statement of principles to cover the exclusive economic zone. After the decision of the Court, the Parties were to enter into discussions to conclude an agreement to determine the respective areas of jurisdiction.

82. A meeting then took place between the two sides on 5 February 1976 at which it was indicated on behalf of Malta that the references to the economic zone should be deleted as at that time there was no international law or convention on the matter but it was a legal concept in evolution. There was also discussion about the order and timing of pleadings and the sources of law to be applied by the Court. On 11 March 1976, at a meeting between Mr Camilleri (Malta) and Minister Ben Amer (Libya) it was agreed that the periods for pleadings contemplated in the Libyan draft should be shortened.

83. This was followed by a visit to Libya on 7 and 8 April 1976 of the Attorney-General of Malta, who met Minister Ben Amer, at which the remaining differences were narrowed – in particular as regards the role of the Court.

84. A further meeting was then held between the Prime Minister of Malta and Mr Ben Amer on 14 April 1976 at which further progress was made and on 23 May 1976 the Special Agreement was signed at Valletta.

85. It was also agreed by an exchange of letters on that day that the representatives of Malta would speak first in the oral hearings.

Ratification of the Special Agreement

86. Malta ratified the Special Agreement within five days, on 28 May 1976.[3]

87. Libya, on the other hand, delayed its ratification for nearly six years, until 19 March 1982. Several times between May and December

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[1] Annex 11.

[2] Annex 12.

[3] Annex 13.

1976 Malta called the attention of Libya to the importance of prompt ratification of the Agreement. Eventually, on 3 December 1976, the Prime Minister of Malta was obliged to draw to the attention of Colonel Gaddafi the economic need for Malta to proceed with exploration in the continental shelf area south of Malta. The Prime Minister went on to say: "I am ready to interpret your silence following receipt of this letter as implying your approval that Libya, as a friendly gesture towards Malta, will let Malta drill in the area up to the Median Line that is exactly equidistant between our two countries.

"Therefore, if by the first day of the new year, we will not receive a reply other than an acknowledgment of our letter, I will assume that this is indeed your wish."[1]

88. When the Prime Minister of Malta met the Minister of Labour and Public Services of Libya on 14 December 1976, the Prime Minister again stressed the need for a favourable answer from Libya.

89. Five days later, on 19 December 1976, Major Jalloud, Prime Minister of Libya, sent a letter to the Prime Minister of Malta, which represented a significant set-back in the move towards judicial settlement and the prospect of economic development by Malta of the continental shelf area pertaining to it. Major Jalloud observed that the subject was not an easy one and that "it cannot be settled quickly because the International Laws in this regard did not establish fixed basis yet". He then went on to veto further unilateral exploration activity by Malta by saying, albeit in diplomatic language:

> "No doubt, accordingly, that you share with me the opinion that it is in the interest of our two friendly people not to take quick decisions from one side. Instructions have been issued to the appropriate experts in the Libyan Arab Republic to give priority to this subject in their researches and studies in order to reach a definite opinion in the nearest time. Such studies would, naturally, include the agreement signed last May which you referred to in your letter."

90. No doubt one factor in the situation was the decision which Libya had taken in August 1976 also to submit the continental shelf boundary dispute with Tunisia to the International Court of Justice.[2] This decision was implemented by the signature on 10 June 1977 of the Special Agreement between Tunisia and Libya and an exchange of ratifications on 27 February 1978.

91. But when on 20 June 1977 the Prime Ministers of Libya and Malta met in Malta the Prime Minister of Libya said that the document signed between Malta and Libya had to be revised on the basis of the conditions agreed with Tunisia; the two agreements could then be ratified together

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[1] Annex 14.

[2] See *Tunisia–Libya* Joint Communiqué, 24 August 1976, concerning the Continental Shelf (*Tunisia–Libya*, I.C.J. Pleadings, Libyan Memorial, Annex I–11).

and the matter referred to The Hague in early January 1978. The Prime Minister of Malta took exception to this, saying that the ratification of the *Libya–Malta* agreement should proceed on the basis of the text already agreed. The Prime Minister of Libya said that he could not guarantee that the People's Committee would consent to ratification of the text as agreed.

92. No further step was taken on the Libyan side. So, seven months later, on 14 January 1978, the Prime Minister of Malta yet again addressed a letter to Colonel Gaddafi, referring to the delay in ratification, expressing his lack of understanding of the causes for it, and saying that "the people of Malta are anxious for exploration work to start, because if oil is found by 1979 our Island would be able to face its future as a neutral country with greater courage".[1]

93. In March 1978 Libya proposed further talks on the subject and on 3–5 May 1978 a Libyan representative went to Malta with a proposal to re-open the negotiations which had led to the agreement of May 1976. As the Prime Minister of Malta said in a letter to Colonel Gaddafi of 12 May 1978,

> "the Libyan proposal puts the clock back at least six years and expects the Government of Malta to start again from scratch".[2]

94. There was then silence on both sides for a full year until 4 May 1979 when Malta, on seeing a reference to the problem in a book published by the Information and Membership Secretariat of Libya, suggested that this clearly meant that Libya had found a solution to the problem and asked what the solution might be. There was no reply.

95. On 16 October 1979, during a visit to Libya, the Prime Minister of Malta raised with the Prime Minister of Libya the possibility of establishing a margin extending five miles wide on each side of the equidistance line within which neither country would conduct exploration activities until the boundary was finally established. The Prime Minister of Libya countered with a proposal to reconsider the 1976 Agreement, in particular by deleting the last four lines of the English text of Article I and providing for consecutive, instead of simultaneous, written pleadings, with Malta to start. It was then agreed that the experts of the two countries should meet at the beginning of November.

96. On 21 November 1979 Malta found it necessary to complain to Libya that the latter had not fulfilled the undertaking for a meeting early in November and expressed anxiety that proceedings were not moving quickly enough to secure ratification of the agreement during the current year's session of the Popular Congresses. Malta said that any new proposals which Libya might make should be ones which had first been authorized by the Popular Congresses and could be implemented without

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[1] Annex 15.

[2] Annex 16.

the need for reference back to the Congresses for ratification. For its part, Malta was prepared to modify its own proposal regarding the identification of the disputed area by extending the margin on each side of the equidistance line from five to fifteen miles in width. Malta emphasized that it could not postpone any longer the exploitation of that part of the continental shelf appertaining to Malta.[1]

97. This note was promptly followed by a visit to Libya by the Attorney-General of Malta and the Secretary of the Ministry of Foreign Affairs of Malta on 26–29 November 1979. Malta indicated that it could not postpone drilling any longer. Libya sought to re-open the 1976 Agreement by proposing that the agreement would be notified to the Court within six months of the exchange of ratifications, that Malta would submit its memorial first and that the Court should not be given jurisdiction to enter into practical matters of drawing the line.

98. When the Maltese delegation indicated that it saw the Libyan proposals as an attempt to delay matters, the Libyan representative indicated, for the first time, that Libya could not cope with two International Court proceedings simultaneously. Libya offered no explanation of why the proceedings with Tunisia should be taken before those with Malta. Malta said that it could only accept the proposal that the Court should not go into the practical methods of drawing the dividing line if there were a provision that if the Parties could not agree on a line within three months of the Court's decision, either could go back to the Court for clarifications with a view to facilitating the conclusion of the Agreement. Libya resisted this.

99. The representatives of Malta repeated that Malta had decided to go ahead with drilling operations. Libya replied that this would endanger relations between the two countries. It was agreed that a further meeting should take place sufficiently soon to leave enough time for Libya to submit the matter to the Popular Congresses for ratification in January 1980.

100. When the Prime Minister of Malta next visited Tripoli on 23 April 1980 he again notified Libya of Malta's intention to commence drilling up to fifteen miles from the equidistance line. The Prime Minister of Libya replied that Libya would protest against and resist such an action. At the end of the meeting the Prime Minister of Libya said that the 1976 Agreement would be ratified and that the two sides would go to the Court in June (1980).

101. On 10 May 1980 Libya addressed a Note Verbale[2] to Malta informing Malta that Libya had come to know about the grant of concessions by Malta in what Libya claimed to be Libya's continental shelf, denounced this violation of its rights and declared its non-recognition of acts which would affect its sovereignty. This was Libya's

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[1] Annex 17.

[2] Annex 18.

first diplomatic protest in respect of the concessions granted by Malta in 1974.

102. At a meeting between a Libyan and a Maltese delegation on 12 May 1980, the representative of Libya again promised that the question of delimitation would be submitted to the People's Congresses later in the month.

103. On 21 May 1980 the Ministry of Foreign Affairs of Malta replied by a Note Verbale[1] to the Libyan communication of 10 May 1980, rejecting as unfounded and inadmissible Libya's claims to areas of continental shelf over which Malta had granted concessions. The Maltese Note recalled that none of the concessions had been granted later than November 1974. It also drew attention to its own protests of 17 and 23 June 1975 against Libya's grants of concessions falling within the area of Malta's continental shelf.

104. On 20 August 1980, an Italian rig in use by Texaco Malta Inc. for the purpose of drilling in Block 3 in the region of the Medina Bank[2] was approached by Libyan warships and, despite protests by the Government of Malta and by the licensees and their contractors, was forced to stop drilling and withdraw from the site. On 30 August, 1980 the matter was referred by Malta to the Security Council of the United Nations as one which was of potential danger to peace and security in the region. On 17 October, 1980 the Secretary-General of the United Nations wrote to the Security Council informing the Council that with the agreement of the parties he intended to appoint a Special Representative to help in the search for a mutually acceptable solution[3]. The proposal was accepted by the Council and the Secretary-General was so informed on 22 October, 1980[4]. The Secretary-General then appointed Mr. Diego Cordovez as his Special Representative and on 13 November, 1980 he reported to the Council on Mr. Cordovez's mission to Malta and the Libyan Arab Jamahiriya[5]. In due course, in part as a result of the activities of the Special Representative, Libya ratified the Special Agreement on the basis of which the present proceedings have commenced.

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[1] Annex 19.

[2] See Volume III Map 1.

[3] U.N. Doc., S/14228.

[4] U.N. Doc., S/14229.

[5] U.N. Doc., S/14256.

PART III

THE LAW

CHAPTER IV

MALTA'S EQUIDISTANCE LINE

1. Malta's Delimitation

105. Malta's legal rights in respect of appurtenant areas of continental shelf were confirmed and regulated by means of the Continental Shelf Act adopted in 1966[1]. The provisions of the Act established a median line delimitation. This delimitation was in accordance with the principles and rules of customary international law existing in 1966; and legal developments since then, and State practice in particular, have provided further confirmation of the validity of Malta's median line boundary.

106. The delimitation of 1966 was subject to any agreement which might be concluded with States "of which the coast is opposite that of Malta"[2], a condition which merely reflected the possibility of alterations derived from the necessary adjustments of a negotiated settlement. The position of Malta in this respect was like that of any other coastal State which, by unilateral measures, satisfies the need to confirm and regulate its complement of legal rights over adjacent shelf areas. It is normal experience to find that a delimitation effected in accordance with legal principles is, at some subsequent period, and in greater or lesser degree, the subject of diplomatic controversy. The contingency of the negotiated settlement of such a controversy cannot be said to impugn the legal validity of the median line as constituting the *status quo*.

107. In accordance with her views on the relevant principles and rules of international law, Malta in April 1973 invited applications for Production Licences in the area of continental shelf to the south.[3] The area open for applications consisted of sixteen blocks[4]. The licensing arrangements were based upon the principle of equidistance in the form of a median line[5]. This development involved the implementation of the median line delimitation established in Malta's legislation of 1966.

108. The equidistance line established and consistently maintained by Malta is based upon the appropriate method for achieving an equitable solution in accordance with the principles and rules of international law applicable to the delimitation of areas of continental shelf as between opposite States.

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1. 28 July 1966, Annex 1.
2. See Section 2 of the Act of 1966; and see also the Notice of 24 April 1973, Annex 2, which stated that "The areas of Blocks 12, 13, 14, 15 and 16 are subject to alterations in the light of any agreement on the Median Line between Malta and the Libyan Arab Republic".
3. For the documentation see above para. 35.
4. See the Map attached to Annex 2.
5. See above para. 36.

2. THE CONFIRMATION OF THE EQUITABLE CHARACTER OF THE EQUIDISTANCE METHOD BY STATE PRACTICE

109. The legal justification for the equidistance line in the present case lies in the equitable nature of the delimitation in accordance with the principles and rules of customary international law. The statement of the basic principle – that the delimitation must be in accordance with equitable principles which lead to an equitable result – is to be derived from judicial exposition of the law. On the other hand, as the word "equitable" is not in all respects definite, the determination of what it means in the specific context of continental shelf delimitation must, if it is not to be arbitrary but objectively justifiable, take due account of the practice of States. As will be shown in Chapter VII of this Memorial, this practice provides ample confirmation that in the present case the method which is equitable is that of equidistance. The equitable nature of the equidistance line receives further confirmation in the form of the practice of the States of the Mediterranean region[1] and the conduct of the parties[2].

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[1] See below, paras. 196–200.

[2] See below, paras. 201–207.

CHAPTER V

THE IMPORTANCE OF THE GEOGRAPHICAL FACTS

1. The Principle: the Equitable Result must reflect the Geographical Facts

110. The delimitation of the continental shelf must start from the geographical facts in each particular case. This principle was formulated in the Decision of the Court in the *Anglo-French Continental Shelf Arbitration* as follows[1]: "the validity of the equidistance method, or of any other method, as a means of achieving an equitable delimitation of the continental shelf is always relative to the particular geographical situation". The Court reiterated this principle in several important passages of the Decision in which the importance of the "geographical facts" was stressed. The following passage[2] provides an example of this insistence:

> "In short, this Court considers that the appropriateness of the equidistance method or of any other method for the purpose of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case."

111. At the same time in the passage just quoted the Court of Arbitration was careful to relate the appropriateness of the method of delimitation to the geographical *and other relevant circumstances* of each particular case.

2. The Significant Geographical Facts in the Present Case: Two Coastal States in an entirely normal setting

112. In the light of the principle that the validity of any method of delimitation is always related to the particular geographical situation, it is necessary to review the significant geographical facts in the present case.

113. Malta is an island State and the entire group of islands has a total length of about 28 miles. The principal island in its southern aspects is in every sense opposite the coast of Libya. Moreover, both the island of Malta and the Libyan coastline have a certain tilt, at an attitude northwest to southeast. The entire Libyan coastline is not less than 180 nautical miles from Malta and in some sectors the distance is greater. There are no intervening islands and the seabed is a continuum in geological terms.

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[1] Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 84.

[2] *Ibid.*, para. 97. For similar references in this Decision see paragraphs 95, 103, 181–183, 191, 194, 199, 201, 233–242.

114. These are the facts which constitute the geographical framework of the delimitation to be effected. There are no incidental or unusual geographical features. No Maltese islands exist near the Libyan shore. No peninsulas complicate the picture. There are simply certain large-scale geographical data: the island State of Malta standing at a considerable distance from the coastline of Libya. Two coastal States thus face one another in a very simple setting, in the absence of narrow seas or other special circumstances.

115. This setting is such that any revision of the *status quo* – the equidistance line which is the established boundary – would be inconsistent with the principles enunciated so clearly by the Court in the *North Sea Continental Shelf* Cases[1]:

> "Equity does not necessarily imply equality. There can never be any question of completely refashioning nature, and equity does not require that a State without access to the sea should be allotted an area of continental shelf, any more than there could be a question of rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline. Equality is to be reckoned within the same plane, and it is not such natural inequalities as these that equity could remedy."

116. These basic principles were reiterated by the Court in the *Anglo-French Continental Shelf Arbitration*. In particular, the following passage occurs in the Court's Decision:[2]

> "The equitable delimitation of the continental shelf is not .... a question of apportioning – sharing out – the continental shelf amongst the States abutting upon it. Nor is it a question of simply assigning them areas of the shelf in proportion to their coastlines; for to do this would be to substitute for the delimitation of boundaries a distributive apportionment of shares."

117. In the circumstances of the present case the equidistance method is entirely appropriate since it produces an equitable result. Libya obtains an impressive longitudinal spread of continental shelf, a fact which is illustrated in Figures A and B[3]. In accordance with the equidistance method, Libya obtains an area of approximately 400,000 square kilometres and Malta an area of 60,000 square kilometres. In this sense geography has bestowed considerable benefits upon Libya.

118. Similarly, given Malta's position at distances of 180 miles and more from Libya, together with the natural reach of controlling basepoints even on a modest coastal frontage, Malta receives a certain area

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[1] *I.C.J. Reports 1969*, p. 49, para. 91.

[2] *International Law Reports*, Vol. 54, p. 6, para. 191.

[3] See below, with reference to paras. 243–247.

of shelf, the size and distribution of which reflect Malta's existence and location. Consequently, geography has also smiled upon Malta, though not in the same way as it has on Libya.

119. It may be noted that, on the hypothesis that Malta did not exist, an equidistance line as between Libya and Italy would leave Libya with an area certainly not greater than the area which in the past Libya claimed against Malta[1]. This fact provides a striking confirmation of the inequity of any solution which avoids affording full effect to all coastal States in this region of the Mediterranean. As a perusal of the map[2] will reveal, the position adopted in the Libyan proposal of 1973 could presumably be advanced also against Italy (on the same hypothesis, that no effect is given to Malta), since the island of Sicily in its southern aspects does not have the same longitudinal extension as Libya. The point is, of course, that opposite coastal States are often of different configurations, but this does not necessarily affect the delimitation of the shelf areas dividing them.

120. In the context of delimitation geographical facts have significance primarily in relation to base-points and construction lines. Each type of feature and circumstance has its own benefits and drawbacks. An extensive coastline generates a longitudinally extensive area of shelf rights and yet, at the same time, given the way in which alignments are constructed, many potential base-points on a long, more or less regular, coastline are in a sense wasted or redundant. In the same way, a centrally placed, regularly shaped, island or peninsula will support a smaller number of basepoints which will, nonetheless, generate an appropriately ample area of appurtenant continental shelf. There is no absolute correlation between the extent of a shelf area and the number of basepoints which generate it.

3. THE SIGNIFICANT RÔLE OF SHORT ABUTTING COASTS IN DELIMITATION

121. Thus it follows that any coast *which abuts upon the shelf area to be delimited* has considerable significance, even though the actual frontage involved is more or less modest in extent. The Decision of the Court in the *Anglo-French Continental Shelf Arbitration* gives emphasis to this feature of delimitation. In certain geographical contexts relatively short sectors of "relevant" or, in other words, abutting or controlling coasts, may provide the basis for delimitation by means of the equidistance method. The overriding factors are twofold: First, the existence of a relevant frontage and, secondly, a *relationship* between the abutting coasts and the appurtenant areas of shelf[3].

122. The matter can be expressed in the proposition that, *apart from unusual geographical elements, any coastal feature counts equally and must be*

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[1] For the Libyan claim see above, para. 65. See also the map at Annex 5.

[2] See Annex 5.

[3] *International Law Reports*, Vol. 54, p. 6, para. 240-243, 248.

given the appropriate controlling effect. This important factor lies behind the conclusion of the Court in the *Anglo–French Arbitration* in favour of applying the equidistance principle to the Atlantic region.

123. The conclusion of the Court's reasoning is to be found in paragraph 248 of the Decision:

> "*The Court considers that the method of delimitation which it adopts for the Atlantic region must be one that has relation to the coasts of the Parties actually abutting on the continental shelf of that region*[1]. Essentially, these are the coasts of Finistère and Ushant on the French side and the coasts of Cornwall and the Scilly Isles on the United Kingdom side. ... Both Ushant and the Scilly Isles are ... islands of a certain size and populated; and, in the view of the Court, they both constitute natural geographical facts of the Atlantic region which cannot be disregarded in delimiting the continental shelf boundary without 'refashioning geography'. ..."

124. The significance of the *Anglo–French Arbitration* calls for proper emphasis. It is not suggested that the coastal relationships in the Atlantic region are similar in all respects to the relationships in the present case. The parallel lies in the fact that, *because the areas involved were not in narrow seas*, shelf areas extended for long distances from the abutting or controlling coastal features. In such circumstances the equidistance method was applied to give the same effect in principle both to the very attenuated feature of the Cornish peninsula and to the outlying Scilly Isles[2] as in the case of the considerably more substantial mainland of Finistère.

125. The significance of short abutting coasts is illustrated in the practice of States. In the Agreement signed on behalf of the Governments of Denmark and Norway on 15 June 1979[3] the boundary between the Norwegian coasts and the Faroes is expressly stated to be the median line. Thus, in a situation of opposite coasts, the relatively small feature constituted by the Faroes generates as much appurtenant shelf as the mainland of Norway. The delimitation between Bahrain and Iran provides a further example and the State practice set forth in Chapter VII includes several dozen examples[4].

126. The evidence both of principle and practice leads to the conclusion that, in the absence of unusual geographical features, the coasts of Malta and Libya must play their proper and normal rôle in producing an equitable delimitation of appurtenant areas of continental shelf.

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[1] Emphasis supplied.

[2] Subject to some adjustment in the latter case: Decision, paras. 243–251.

[3] Text supplied officially through diplomatic channels and translated – Annex 20 and map opposite.

[4] For the substantial State practice, see below, para. 185 et seq.

4. THE RELATIONSHIPS OF THE COASTS OF MALTA AND LIBYA RULE OUT APPLICATION OF THE CRITERION OF PROPORTIONALITY

127. In seeking an equitable solution the geographical facts are to be considered in the context of legal principle. The relevance of coasts must be weighed with necessary care and finesse. Thus the geographical configuration relevant to the determination of an equitable method of delimitation consists not merely of 'coasts', of whatever length, but to a considerable extent of the *relationships* of coasts. The *location and relation of coastlines* are the overriding factors. *It is the position of Malta at a distance from the Libyan coast, and the absence of intervening islands, which are as important as any other aspect of the geography.*

128. The geographical picture contains two elements which are of particular relevance to the issue of delimitation and which make the "refashioning of geography" completely inapposite even if such refashioning were allowed by legal principle. These two elements are as follows:

(*a*) The fact that a restricted coastal sector may produce a number of very influential controlling points by reason of its location and character: and such is the case of Malta.

(*b*) The fact that the effect of the difference between the west-east or lateral reach of the Maltese and Libyan coastlines leaves Libya with a very large part of the shelf area dividing Malta and Libya.

129. From these elements – the nature of the coastal relationships in the present case – it follows that the criterion of proportionality (by reference to the length of the respective coastlines) cannot be applied if an equitable solution is to be achieved. The differences in the geographical identity of the two States are so marked that the requirement of equity that "like should be compared with like" – 'the only absolute requirement of equity'[1] – is not applicable.

130. Any attempt to make the delimitation reflect the difference in coastal lengths as between Malta and Libya would be inconsistent with legal principle, since it would involve a simple apportionment of the continental shelf. Moreover, such an apportionment of the area of shelf between the two States would be in conflict with the basic notion that the shelf constitutes the natural prolongation of the coastal State's land territory and thus appertains to that State *ipso facto* and *ab initio*. As the Court observed in the *North Sea Continental Shelf* cases[2]:–

> "19. More important is the fact that the doctrine of the just and equitable share appears to be wholly at variance with what the Court entertains no doubt is the most fundamental of all the rules of law

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[1] *Tunisia–Libya Continental Shelf* case, *I.C.J. Reports 1982*, p. 76, para. 104.

[2] *I.C.J. Reports 1969*, p. 22, para. 19.

> relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it – namely that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here an inherent right".

5. Conclusion: The Foundations of the Equitable Solution

131. The crucial and incontrovertible fact is that the legal framework of the present case consists of the essentially very simple Malta–Libya coastal relationships. The two States face one another at a considerable distance and in the absence of unusual features. It is this entirely normal setting which forms "the geographical and legal framework" for an adjudication concerning the basis of continental shelf delimitation[1].

132. The geographical facts must be placed in the context of legal reasoning and equitable principles. Malta and Libya are opposite States abutting upon continental shelf areas which form a geological continuum. In this type of situation it is only the equidistance method of delimitation that can lead to an equitable solution.

133. In the light of the coastal relationships of Malta and Libya any departure from equidistance would involve substantial breaches of two cardinal principles of equitable delimitation:

(*a*) The principle that, in the case of a continental shelf dividing opposite States, the delimitation is normally by means of a median line[2]; and,
(*b*) The principle of non-encroachment[3].

These principles will be accorded further statement and elaboration in later sections of this Memorial. The median line principle is examined in Chapter VII, paras. 181–184, and the rôle of the principle of non-encroachment is explained more fully in Chapter IX, paras. 240–247.

134. The principle of non-encroachment can only be applied in the present case on the basis of equidistance. The *location* of Malta as a coastal State *distant* from the Libyan coastline necessitates the use of a median line. The two equitable principles of non-enroachment and opposite State equality reflect the idea that the shelf is a prolongation of the land

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[1] Cf. *The Anglo-French Continental Shelf Arbitration, International Law Reports*, Vol. 54, p. 6, paras. 181, 187, 199.

[2] *North Sea* cases, *I.C.J. Reports 1969*, p. 36, para. 57; *Anglo-French Arbitration, International Law Reports*, Vol. 54, p. 6, para. 85.

[3] *North Sea* cases, *I.C.J. Reports 1969*, p. 53, para. 101; and see also *ibid.*, p. 47, para. 85(c); *Anglo-French Arbitration, International Law Reports*, Vol. 54, p. 6. para 85.

territory under the sea. It is for the same reason that the factor of proportionality can only be meaningful in the case of adjacent States and cannot produce an equitable solution in the geographical situation of opposite States such as Malta and Libya[1].

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[1] See the view expressed by Professor Bowett, Q.C., in his work *The Legal Régime of Islands in International Law*, (1978), p. 164; quoted below at para. 258.

CHAPTER VI

MALTA'S ENTITLEMENT AS AN ISLAND STATE

1. The Elements of Entitlement

135. The position adopted during negotiations by the Libyan Government and the position which, it can be assumed, will be reflected in the Libyan arguments in these proceedings, involves a fundamental refusal to accord to Malta her lawful rights as a coastal State. The consequence is that Malta finds it necessary, at the risk of stressing what is obvious, to include in her submissions arguments on certain basic issues of principle.

136. Malta contends that as a coastal State she has a legal entitlement to the area of continental shelf which appertains to the territory of Malta in accordance with equitable principles, and thus to a shelf area delimited on the basis of the equidistance method. This entitlement rests upon the following legal elements:

(1) the generally recognised significance of islands in maritime delimitation;
(2) the importance of the exercise of political authority as a central element in the legal conception of shelf rights;
(3) the principle of equality of States;
(4) the entitlement of island States and Dependencies to appurtenant shelf areas in customary international law as other coastal states;
(5) the recognition of the entitlement of island States in doctrine; and
(6) the Conventions of 1958 and 1982.

Malta will now develop its position relating to these elements of entitlement *seriatim*.

(1) *The Generally Recognised Significance of Islands in Maritime Delimitation*

137. The dictates of common sense and considerations of legal principle insist upon the significance of islands in the context of maritime delimitation.[1] It is obvious that islands normally have a political rôle and in the recent past even the status of rocks has been the subject of considerable controversy. Many bilateral agreements on delimitation illustrate the significance of groups of islands[2].

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[1] *Cf.* the Separate Opinion of Judge Schwebel, ***Tunisia-Libya Continental Shelf*** case, *I.C.J. Reports 1982*, p. 99; and the Report of the Conciliation Commission concerning the ***Jan Mayen Continental Shelf***, 19-20 May 1981; ***International Law Reports***, Vol. 62, p. 108 at p. 126.

[2] See Chapter VII of this Memorial for the enumeration of treaties.

138. In the Decision of the Court in the *Anglo–French Continental Shelf Arbitration* the reasoning strongly indicates the political elements in approaching the evaluation of the pertinent geographical facts. Thus in respect of the Channel Islands their political status was carefully weighed in a substantial section of the Decision[1]. In particular the Court examined "their political relation to the United Kingdom"[2], their constitutional status[3], the degree of autonomy vis-à-vis the United Kingdom[4], "the question whether the Channel Islands are to be considered as political units distinct from the United Kingdom"[5], and the question of "responsibility for the foreign relations of the Channel Islands"[6]. The Court concluded[7] that it "must treat the Channel Islands only as islands of the United Kingdom, not as semi-independent States entitled in their own right to their own continental shelf vis-à-vis France".

139. In the same connection the weight given by the Court to the Scilly Islands (in the delimitation of the Atlantic region) depended upon the Court's view that they constituted "the projection of the United Kingdom land mass further into the Atlantic region"[8]. In contrast, the Court emphasised the geographical detachment of the Channel Islands from the mainland of the United Kingdom[9].

140. The case of the island State is necessarily *a fortiori*. The island (or group of islands) constitutes the mainland both in the political and in the geographical sense. The island State is the homeland and benefits, like other coastal States, from the principle that the land dominates the sea. The island State is a geographical and political fact: it is not a "special circumstance" or "an incidental special feature", the effects of which may be reduced[10].

141. Malta, as a coastal State, has continental shelf rights as "an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State"[11]. Such rights exist whether the coastal State consists of one or more of the following features:–

(*a*) an island State near a "mainland" of another State;
(*b*) an island State isolated in mid-ocean or otherwise distant from other coastal States;

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[1] Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, paras. 183–187.
[2] *Ibid.* para. 183.
[3] *Ibid.* para. 184.
[4] *Ibid.*
[5] *Ibid.* para. 185.
[6] *Ibid.* para. 186.
[7] *Ibid.*
[8] *Ibid* para. 244.
[9] *Ibid* para. 199; and see also paras. 183, 187.
[10] See the Judgment in the *North Sea* cases, *I.C.J. Reports 1969*, pp. 49-50, para. 91.
[11] *Aegean Sea Continental Shelf* case, *I.C.J. Reports 1978*, p. 36, para. 86, quoted in the *Tunisia-Libya Continental Shelf* case, *I.C.J. Reports 1982*, p. 61, para. 73.

(*c*) a peninsula State;
(*d*) a group of islands as in (a);
(*e*) a group of islands as in (b).

142. The position would remain the same if one State had only a short coastal frontage abutting upon the continental shelf areas concerned. It would also remain the same if one coastal State had a frontage based upon a very exiguous tranche or strip of land territory, either adjacent to a neighbouring State[1], or in the form of a narrow peninsula.

(2) *The Importance of the Exercise of Political Authority as a Central Element in the Legal Conception of Shelf Rights*

143. The legal relevance of the political status of islands has been stressed sufficiently already in this Memorial, but the position of the island *State* calls for appreciation of a particular facet of fundamental legal doctrine. The legal conception of continental shelf rights contains a political element: the inherent right of the coastal State to regulate activity in the adjacent and appurtenant submarine areas. Thus the exercise of political authority is central to the legal conception of shelf rights.

144. The connection between the sovereignty of the coastal State over its land territory and its rights in respect of the shelf is explained with clarity and emphasis in the Judgment of the Court in the *Tunisia–Libya Continental Shelf* case. In the words of the Court[2]:

> "73. It should first be recalled that exclusive rights over submarine areas belong to the coastal State. The geographic correlation between coast and submerged areas off the coast is the basis of the coastal State's legal title. As the Court explained in the *North Sea Continental Shelf* cases the continental shelf is a legal concept in which 'the principle is applied that the land dominates the sea' (*I.C.J. Reports 1969*, p. 51, para. 96). In the *Aegean Sea Continental Shelf* case the Court emphasised that
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> > 'it is solely by virtue of the coastal State's sovereignty over the land that rights of exploration and exploitation in the continental shelf can attach to it, *ipso jure*, under international law. In short, continental shelf rights are legally both an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State.' (*I.C.J. Reports 1978*, p. 36, para. 86).
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> As has been explained in connection with the concept of natural prolongation, the coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it. Adjacency of the

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[1] Examples: U.S. territory in Gulf of Alaska; the Argentine coastal strip on the eastern side of Isla Grande, Tierra del Fuego; the Thai coast on the western side of the Gulf of Siam

[2] *I.C.J. Reports 1982*, p. 61, para. 73. See also *ibid.*, paras. 74 and 75.

sea-bed to the territory of the coastal State has been the paramount criterion for determining the legal status of the submerged areas, as distinct from their delimitation, without regard to the various elements which have become significant for the extension of these areas in the process of the legal evolution of the rules of international law."

145. It will be recalled that the Court in the *Aegean Sea Continental Shelf* Case decided the crucial question of interpretation (of the Greek reservation (b)) on the basis that a dispute as to shelf rights related to the "territorial status" of the coastal State[1].

146. In the *Rann of Kutch Arbitration* Judge Aleš Bebler[2] observed that "an island State is normally prompted to control the sea around it and would not like this sea to be controlled by others, because in the latter case the island State would be at the mercy of the master or masters of the surrounding sea." The good sense of this statement undoubtedly applies to the regime of the continental shelf.

147. The position of the island State is one of particular sensitivity in view of the fact that it has a homeland or "mainland" which consists of an island or group of islands, together with the appurtenance of the continental shelf in accordance with the principle that "the land dominates the sea"[3]. The legal interaction of land territory and sovereign rights over submarine areas is much more critical than it is for most other coastal States. Moreover, the relationship with the appurtenant shelf areas has an enhanced significance in cases like that of Malta, that is to say, when land-based resources are minimal and the shelf is the only possible location of the resources.

148. There is an obvious parallel between the dependence of certain coastal States on fish stocks in adjacent waters and the strong and abiding interest which Malta has in the prospect of petroleum resources of the appurtenant shelf areas. To describe this interest as "economic" would be inadequate. Such an interst, in the present condition of the world, cannot be exclusively economic *but* embraces political and security elements. On two occasions the jurisprudence of the International Court has given recognition of the legal interest which a coastal State may have, given certain conditions, in economic resources of adjacent maritime areas. In the *Fisheries* Case of 1951 the Judgment of the Court referred to the consideration of "certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage"[4]. In the *Fisheries Jurisdiction* Case (United Kingdom v. Iceland) the Court recognised "the concept of preferential rights of fishing in adjacent waters

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[1] *I.C.J. Reports 1978*, p. 36, para. 86 *in fine*.

[2] *International Law Reports* Vol. 50, p. 387 at p. 392 (Dissenting Opinion).

[3] *North Sea Continental Shelf* cases, *I.C.J. Reports 1969*, p. 51, para. 96.

[4] *I.C.J. Reports 1951*, p. 116 at p. 133.

in favour of the coastal State in a situation of special dependence on its coastal fisheries"[1].

149. In this litigation Malta is seeking the legal affirmation and protection of important aspects of her national patrimony and in particular the sovereign rights to govern, manage, exploit and conserve the resources of appurtenant shelf areas. The method of equidistance provides a delimitation which gives appropriate recognition of the need for an adequate political control, both as to the quality and extent of such control, by the island State of Malta in respect of adjacent submarine areas. The coast of any State generates appurtenant zones of maritime jurisdiction. The distance criterion, which is prominent in recent sources of the law of maritime delimitation, is a reflection of the rule that all coastal States have a lateral reach of jurisdiction. Such an apron of jurisdiction is a necessary attribute of national security. The equidistance method thus gives effect to the logic that Malta's need for security is no less than that of Libya. Malta will refer to this aspect of the matter again later in this Memorial[2].

(3) *The Principle of Equality of States*

150. The legal validity of the median line as the delimitation of appurtenant shelf areas in the present case is supported both by the equitable principles which constitute the law of shelf delimitation and also by the principle of the equality of States (as a general principle of international law)[3]. Given the simple coastal relationships of Malta and Libya, an encroachment northward of the median line would involve an affront to the principle of the equality of States and, in particular, of coastal States.

151. It is a striking fact that the well-established principles of continental shelf law give a specific and practical application of the principle of equality in the case of opposite States. Thus in the *North Sea Continental Shelf* cases the Judgment states the following important legal principle[4]:

> "The continental shelf off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; . . ."

In the *dispositif* of the Judgment the Court states that if "the delimitation leaves to the Parties areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally . . . "[1].

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[1] *I.C.J. Reports 1974*, p. 3 at p. 23, para. 52; and see also paras. 55-68. See also *Fisheries Jurisdiction* case (Federal Republic of Germany v. Iceland), *ibid.*, p. 175 at pp. 191-192, para. 44; and see also paras. 45-60.

[2] See below, para. 232.

[3] Standard references include the Charter of the United Nations, Article 2, paragraph 2, and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States of 1970 (U.N. General Assembly Resol. 2625 (XXV) adopted without vote on 24 October 1970).

[4] *I.C.J. Reports 1969*, p. 36, para. 57.

152. In the *Anglo-French Continental Shelf Arbitration* the Court made two affirmations of the same principle:

> "Whereas in the case of 'opposite' States a median line will normally effect a broadly equitable delimitation, a lateral equidistance line extending outwards from the coasts of adjacent States for long distances may not infrequently result in an inequitable delimitation by reason of the distorting effect of individual geographical features."[2]
>
> "In a situation where the coasts of the two States are opposite each other, the median line will normally effect a broadly equal and equitable delimitation."[3]

153. In the present case, the median line "must effect an equal division" of the area involved. Malta and Libya are opposite States and there are no complicating features of the type envisaged by the Court in the *North Sea* cases. In this context island States are on the same footing as other coastal States.

(4) *The Entitlement of Island States and Dependencies to Appurtenant Shelf Areas in Customary International Law*

154. Malta's entitlement to a delimitation based upon a median line is firmly based on the principles of customary law as they have evolved since 1945. The evolution contains three related elements as follows:

(*a*) The law recognised from very early on that coastal States were entitled to appurtenant shelf areas without discrimination: indeed, the State practice was related to island States and island dependencies from 1948 onward.

(*b*) In due course both the practice of States and the jurisprudence of international tribunals accepted that the appropriate method of delimiting the shelf area dividing opposite States was normally by means of a median line.

(*c*) Both as a matter of logical necessity and the practice of States in delimitation it was recognised that island States and island dependencies were entitled to a median line delimitation whenever the situation was that of opposite States.

155. It is necessary to draw the attention of the Court to the relevant aspects of the evolution of the customary law concerning the entitlement of States and dependencies to rights over adjacent shelf areas. In the remainder of the present Chapter the general aspects of State practice

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[1] *Ibid.*, p. 53, para. 101.

[2] Decision of 30 June 1977, *International Law Reports*, Vol. 54, para. 95.

[3] *Ibid.*, para. 239.

concerning entitlement will be examined. In Chapter VII the link between entitlement *grosso modo* and the appropriateness of the equidistance method of delimitation will be elucidated; and in that context it will be demonstrated that State practice indicates the equitableness of the equidistance method in the case of island States opposite distant mainlands.

156. It is universally recognised that the development of the concept of the continental shelf in customary international law began substantially with the Truman Proclamation of 28 September 1945 and the Mexican Presidential Declaration of 29 October 1945[1]. Within a short period a pattern of claims was evident and it is a striking fact that from the beginning island States and island dependencies were prominent in the State practice. The chronology of practice relating to island States and dependencies is as follows[2]:

Bahamas: Bahamas (Alteration of Boundaries) Order in Council (No. 2574), 26 November 1948[3].

Jamaica: Jamaica (Alteration of Boundaries) Order in Council (No. 2575), 26 November 1948[4].

Bahrain: Proclamation with respect to the seabed and the subsoil of the high seas of the Persian Gulf, 5 June 1949[5].

Philippines: Petroleum Act of 1949, enacted by Republic Act No. 387, 18 June 1949[6].

Falkland Islands: Falkland Islands (Continental Shelf) Order in Council (no. 2100), 21 December 1950[7].

Dominican Republic: Law No. 3342, dated 13 July 1952, concerning the extent of the Territorial Waters of the Republic (see Article 5 thereof)[8]

Sri Lanka: Proclamation of 19 December 1957 by the Governor-General on the Rights over the Continental Shelf and Conservation Zones[9].

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[1] These instruments are to be found in the U.N. Legislative Series ST/LEG/SER.B/1, *Laws and Regulations on the Régime of the High Seas*, Vol. I, New York, 1951, pp. 13 (Mexican Declaration), 38 (U.S. Proclamation).

[2] For convenience' sake the terminal year is 1972.

[3] *Ibid.*, p. 31. See also the Continental Shelf Act, 1970, U.N. Legis. Ser., ST/LEG/SER.B/16, 1974, p. 172.

[4] *Ibid.*, p. 33.

[5] *Ibid.*, p. 24.

[6] *Ibid.*, p. 19. See also Proclamation No. 370 of 20 March 1968 by the President of the Philippines, U.N. Legis. Ser., *National Legislation and Treaties Relating to the Territorial Sea*, ST/LEG/SER.B/15, New York, 1974, p. 422.

[7] *Ibid.*, p. 305.

[8] *Laws and Regulations on the Régime of the Territorial Sea*, ST/LEG/SER.B/6, New York, 1957, p. 11. See also Law No. 186, promulgated on 13 September 1967, U.S. Dept. of State, The Geographer, *Limits in the Seas*, No. 5.

[9] U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/16, New York, 1974, p. 164.

Haiti: Decree dated 22 December 1959[1].

Seychelles: Minerals Ordinance, No. 14 of 1962, 15 October 1962[2].

New Zealand (and the Cook Islands): Continental Shelf Act, 1964, No. 28 of 1964, 3 November 1964[3].

Malta: Continental Shelf Act, 1966; 28 July 1966[4].

Ireland: Continental Shelf Act, 1968; 11 June 1968[5].

Barbados: Petroleum Act 1950 (Amendment) Act, 1968; 15 February 1968[6].

Iceland: Act of 24 March 1969 regarding the sovereign rights of the Icelandic State over the continental shelf around Iceland[7].

Trinidad and Tobago: Continental Shelf Act, 1969; 22 December 1969[8].

Cayman Islands: Petroleum (Production) (Amendment) Law, 1969; Law 16 of 1969; 1 January 1970[9].

Mauritius: Continental Shelf Act, 1970; 16 April 1970[10].

Solomon Islands: Continental Shelf Ordinance, No. 4 of 1970; 28 July 1970[11].

Tonga: Continental Shelf Act, 1970; Act No. 6 of 1970; 1 December 1970[12].

Fiji Continental Shelf Act, 1970; Act No. 9 of 1970; 30 December 1970[13].

Cyprus: Statement of the Ministry of Foreign Affairs, 31 May 1972[14].

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[1] *Le Moniteur*, No. 113, 28 Dec. 1959 (unverified reference). See also the Decree of 6 Apr. 1972; U.S. Dept. of State, The Geographer, *Limits in the Sea*, No. 51, p. 6.

[2] U.N. Legis. Ser., *National Legislation and Treaties Relating to the Territorial Sea*, ST/LEG/SER.B/15, New York, 1970, p. 460. See also the Mining (Mineral Oil) Ordinance, No. 7 of 1963, 6 May 1963, *ibid.*, p. 461; and the Control of the Natural Resources of the Seabed and Subsoil Ordinance, No. 16 of 1967, 24 November 1967.

[3] *Ibid.*, p. 389. Section 9 applies the Act in the Cook Islands, with certain exceptions which are not material.

[4] U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/16, New York, 1974, p. 156.

[5] U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/18, New York, 1976, p. 157.

[6] Suppl. to Official Gazette, dated 15 February 1968.

[7] U.N. Legis. Ser., *National Legislation and Treaties Relating to the Territorial Sea*, ST/LEG/SER.B/15, New York, 1970, p. 364.

[8] Act No. 43 of 1969.

[9] *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/16, New York, 1974, p. 114.

[10] Act No. 5 of 1970.

[11] *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/16, New York, 1974, p. 175.

[12] U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/18, New York, 1976, p. 165.

[13] U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/16, New York, 1974, p. 141.

[14] *Ibid.*, p. 136.

157. With two exceptions[1], the twenty-one precedents recorded above relate either to independent States or to Protected States or to dependencies which subsequently achieved full independence. At no time has any State expressed a doubt or reservation in the face of the persistent pattern of practice on the part of island States and States acting on behalf of island dependencies, most of which have become independent since the original legislation was made. The evidence of the silence and acquiescence of non-island States in the view that island States have a normal entitlement of shelf rights has particular cogency. The earliest claims – and especially those in respect of Jamaica, the Bahamas and Bahrain, in the years 1948 and 1949 – received the greatest possible publicity and were widely commented upon. The concept of shelf rights was regarded as both radical in legal terms and of great practical importance.

(5) *Recognition of the Entitlement of Island States in Doctrine*

158. The early claims and State legislation received the widest possible notice both in government circles and in the literature of the law. The shelf claims relating to Jamaica, the Bahamas and Bahrain were subjected to examination in many sources in the period 1948 to 1955, and the following items provide a substantial sample of the material (in chronological order):

(*a*) Young, 'Further claims to areas beneath the high seas', *American Journal of International Law*, Vol. 43 (1949), pp. 790–792.

(*b*) Azcárraga, 'Los Derechos sobre la plataforma submarina', *Revista española de derecho internacional*, Vol. 2 (1949), pp. 47–99.[2]

(*c*) U.N. Secretariat Memorandum, 14 July 1950; *Yearbook of the International Law Commission*, 1950, Vol. II, p. 67 at pp. 87–113.

(*d*) Lauterpacht, 'Sovereignty over submarine areas', *British Year Book of International Law*, Vol. 27 (1950), pp. 376–433.

(*e*) *Anglo-Norwegian Fisheries* case, Pleadings of the Norwegian Government: *Pleadings*, Vol. II, pp. 249–262 (Annexes to the Norwegian Counter-Memorial); *ibid.*, Vol. III, pp. 647–653 (Norwegian Reply).

(*f*) Young, 'Delimitation of seaward areas under national jurisdiction', *American Journal of International Law*, Vol. 45 (1951), pp. 225–239; (and see, in particular, at p. 236).

(*g*) Award in the case of *Petroleum Development Ltd.* v. *Sheikh of Abu Dhabi*, September 1951; *International Law Reports*, Vol. 18, p. 144 at p. 153.

(*h*) Azcárraga, *La plataforma submarina y el derecho internacional*, Madrid, 1952.

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[1] Namely: the Falkland Islands and the Cayman Islands, as dependencies of the United Kingdom.

[2] This writer does not refer to the precedents involving Jamaica, the Bahamas and Bahrain, but considers Latin-American practice, including therein Cuban proposals of 1946 and 1947.

(*i*) Gidel, *Le Plateau Continental*, International Bar Association, Madrid, July 1952; Martinus Nijhoff, The Hague.

(*j*) Mouton, *The Continental Shelf*, The Hague, 1952 (see, in particular, pp. 250–260.

(*k*) Anninos, *The Continental Shelf and Public International Law*, The Hague, 1953, pp. 30–39, 150–151.

(*l*) Rousseau, *Droit international public*, Paris, 1953, paragraph 567.

(*m*) Colombos, *The International Law of the Sea*, 3rd edition, London, 1954, pp. 58–63.

(*n*) Goldie, 'Australia's Continental Shelf: Legislation and Proclamations', *International and Comparative Law Quarterly*, Vol. 3 (1954), pp. 535–575.

(*o*) Oppenheim, *International Law*, 8th edition, by H. Lauterpacht, London, 1955, Vol. I, pp. 631–635.

159. This mass of materials includes the work of some of the leading publicists of the period, and represents a variety of nationalities. In responding to and participating in the development of continental shelf doctrine the writers make not a single critical observation concerning the shelf claims relating to Jamaica, the Bahamas, Bahrain or the Falkland Islands.

160. The literature of the law and, indeed, all the available sources, indicate with absolute certainty that the State practice of coastal States whose homeland consisted of one or more islands, failed to evoke a single protest or reservation. The acquiescence and recognition of other States was the general rule and there were no exceptions. Moreover, it may be recalled that in this period States did not fail to protest developments in maritime matters of which they disapproved[1]. The acceptance of the international community is evidenced also in Digests of State practice. Thus the official Department of State publication, *Digest of International Law*, edited by Dr. Whiteman, chronicles the practice in detail[2] and records no United States reservation concerning the shelf rights of island States and island dependencies.

(6) *The Conventions of 1958 and 1982*

161. As a matter of legal principle the modern law of the sea assimilates islands and island-coasts to mainland territory in respect of continental shelf entitlement and rights and for all purposes of delimitation. The legal position is fully reflected in the 1958 Conventions. Thus the Convention on the Territorial Sea and Contiguous Zone makes provision as follows in Article 10:

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[1] See Auguste, *The Continental Shelf*, Geneva and Paris, 1960, p. 144 (note 137), referring to protests on the part of the United Kingdom and others in response to South American claims. For U.S. protest notes to various South American Governments, see Whiteman, *Digest of International Law*, Vol. IV, pp. 792–802.

[2] Vol. IV, released April 1965, pp. 789–814.

> "1. An island is a naturally-formed area of land, surrounded by water, which is above water at high tide.
>
> 2. The territorial sea of an island is measured in accordance with the provisions of these articles."

In the provisions relating to delimitation (Article 12 and Article 24, paragraph 3) the same Convention makes no reference to island States or the coasts of island States as a legally distinct category.

162. The Convention on the Continental Shelf of 1958 defines the term "continental shelf" by reference to "the coast" (in general) and also to "the coasts of islands" (Article 1). In defining the legal quality of continental shelf rights, Article 2 refers comprehensively to "the coastal State" without further distinction.

163. At the First United Nations Conference on the Law of the Sea, the Fourth Committee adopted a Philippine proposal to add an additional paragraph to the draft Article 67[1]. As adopted by the Committee, the text of Article 67 included a second paragraph as follows: "For the purpose of these articles the term "continental shelf" shall be deemed also to refer to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands."[2] In the final text of the Convention on the Continental Shelf the two paragraphs were merged into a single text (Article 1) as follows:

> "For the purpose of these articles, the term 'continental shelf' is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast . . . ; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands."

164. Another facet of State practice of relevance in the present connection is the manner in which Parties to the 1958 Convention did or did not make reservations thereto relating to the effect upon delimitation of the presence of islands. It will be recalled that the 1958 Convention contains, in Article 12, provisions permitting reservations to be made to, *inter alia*, Article 6, which is the delimitation article. The only Parties to make reservations relating in any way to islands were the Republic of China (which stated that in determining the boundary of the continental shelf exposed rocks and islets shall not be taken into account), France (which rejected the application of equidistance in those areas where, in the Government's opinion, special circumstances exist, including in particular the Bay of Granville) and Venezuela (which declared that there are special circumstances to be taken into account in the area between the coast of Venezuela and the island of Aruba).[3]

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[1] *United Nations Conference on the Law of the Sea, Official Records*, Vol. VI, pp. 31–47, 133.

[2] *Ibid.*, p. 143.

[3] As recorded in the U.N. publication, *Multilateral Treaties in respect of which the Secretary-General performs depositary functions*, New York, 1980.

165. The practice of States in the matter of reservations to the 1958 Convention is entirely compatible with, and provides confirmation of, the practice of States generally concerning the entitlement of island States. Only three reservations touched on the question of islands *in any form* and no reservation related to island States. The significance of the absence of any reservation concerning delimitation in respect of island States is enhanced by the fact that six of the States signing, ratifying or acceding to the 1958 Convention had coasts opposite to island States. The pertinent cases of juxtaposition were as follows:

Colombia (ratified 8 January 1962) ***vis-à-vis*** Dominican Republic and Haiti.
Iran (signed 28 May 1958) ***vis-à-vis*** Bahrain.
Malaysia (acceded 21 December 1960) ***vis-à-vis*** Singapore.
Mexico (acceded 2 August 1966) ***vis-à-vis*** Cuba.
United Kingdom (ratified 11 May 1964) ***vis-à-vis*** Republic of Ireland.
United States (ratified 12 April 1961) ***vis-à-vis*** Cuba and the Bahamas.

166. The practice in the matter of reservations to the Convention is consistent with the text of the Articles of the Convention itself. Island States were regarded as having a normal entitlement to shelf rights.

167. In connection with the Law of the Sea Conference of 1958 the attention of the Court is respectfully drawn to a document (included in the "Preparatory Documents" of that Conference) which is of relevance. "Preparatory Document No. 2"[1] consists of a memorandum by the UNESCO Secretariat entitled "Scientific considerations relating to the continental shelf". The contents of this item show that without any doubt the concept of continental shelf included both "the zone around an island or island group"[2] and the "shallow seas between islands and/or continents"[3]. Of the latter the Memorandum states that "these areas incontestably form parts of the continental shelf". The examples given include the Gulf of Paria (between Venezuela and Trinidad) and the Arabian (or Persian) Gulf.

168. The various drafts produced by the Third United Nations Conference on the Law of the Sea contain a special part relating to the "Régime of Islands", but the effect is emphatically the same: island States are not the subject of any special provision. The provision in the Convention on the Law of the Sea signed in Jamaica on December 10, 1982 is identical with the provision (Article 132) formulated in the

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[1] *United Nations Conference on the Law of the Sea, Official Records*, Vol. I, p. 39 (Doc. A/Conf. 13/2 and Add 1).

[2] *Ibid.*, para. 6; and see also para. 11.

[3] *Ibid.*, para. 12.

Informal Single Negotiating Text dated 7 May 1975[1]. The relevant text is as follows:

> "PART VIII
>
> RÉGIME OF ISLANDS
>
> *Article 121*
>
> *Régime of islands*
>
> 1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
> 2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
> 3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

169. There can be little doubt that these formulations constitute evidence of the state of general or customary international law in the last thirty years or so in respect of the legal status of islands. On the general issue there is a consistency in the position adopted both in the Conventions of 1958 and in the drafts, and the Convention, produced in the period 1975 to 1982 by the Third United Nations Conference: in matters of maritime delimitation no legal disability attaches to coastal States which are islands or consist of a group of islands. In this connection it is to be recalled that of Article 121 Judge Oda has remarked: "No suggestion was ever made, and no idea ever presented, to imply that an island State should be distinguished from other coastal States or from any non-independent islands or groups of islands"[2]. Indeed, the terms of the third paragraph of Article 121 present an *a fortiori* argument[3]. Only very insignificant features are to be denied a normal rôle in the process of delimitation.

170. The consistency of the doctrine that island States are under no legal disability in relation to the entitlement to, or delimitation of, areas of appurtenant continental shelf is confirmed by the literature in the period after the conclusion of the Continental Shelf Convention of 1958. The

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[1] Doc. A/CONF.62/WP.8/Part II; *Third United Nations Conference on the Law of the Sea, Official Records*, Vol. IV, p. 152.

[2] Dissenting Opinion, *Tunisia-Libya* case, *I.C.J. Reports 1982*, pp. 251-252, paras. 149-150 (at p. 252, para. 150).

[3] See the Dissenting Opinion of Judge Evensen, *Tunisia-Libya* case, *I.C.J. Reports 1982*, p. 283.

items which follow are representative of the publications in the relevant period:

Whiteman, *Digest of International Law*, Vol. IV, U.S.G.P.O., Washington, 1965, pp. 808–810.

Barabolya *et al.*, *Manual of International Maritime Law*, Moscow, 1966 (translation, Dept. of the Navy, Washington, D.C., 1968), pp. 101–102.

De Visscher, *Les problèmes de confins en droit international public*, 1969, pp. 148–157.

Verzijl, *International Law in Historical Perspective*, Vol. III, Paris, 1970, pp. 77–94.

2. THE ENTITLEMENT OF ISLAND STATES: FURTHER EVIDENCE

171. The practice of States in affirming the normal entitlement of island States, as coastsl States, for purposes of shelf delimitation is complemented by other evidence of the law.

172. In the *Anglo-French Continental Shelf Arbitration* the Court considered the evidence of the relationship of the Channel Islands and the United Kingdom and concluded that "in matters relating to the continental shelf, it is the United Kingdom Government which is the responsible authority, both internally and externally"[1]. The Court then expressed the following legally significant conclusion[2]:

> "It follows that, as between the United Kingdom and the French Republic, the Court must treat the Channel Islands only as islands of the United Kingdom, *not as a semi-independent States entitled in their own right to their own continental shelf vis-à-vis the French Republic*."[3]

173. This statement involves the finding that the Channel Islands "are separate islands of the United Kingdom, not separate States"[4]. It also constitutes an acceptance of the principle that island States do not suffer reduction of shelf rights. In the words of a recent writer[5]: "The implication lying behind this finding is that had the Channel Islands constituted *independent*[6] island States, their effect as continental shelf basepoints would have been different." In the same general connection, Professor Bowett[7] has observed that: "In practice States, whether parties

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[1] Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 186; and see also para. 172.

[2] *Ibid.*

[3] Emphasis supplied.

[4] *Ibid.*, para. 190 *in fine*.

[5] Dr. Clive R. Symmons, *The Maritime Zones of Islands in International Law*, The Hague, 1979, p. 177.

[6] Emphasis in the original.

[7] *The Legal Regime of Islands in International Law*, New York, 1979, p. 140.

to the 1958 Convention or not, and whether 'island-States' or continental States with off-shore islands, have asserted rights to continental shelf for their islands."

174. A former Geographer of the United States Department of State adopted the view that, as a matter of principle, an island State should be given full effect for purposes of continental shelf delimitation[1]:

> "A fifth situation also calls for the full effect of islands, although care must be exercised in the application. An independent state, or perhaps even an autonomous insular state, should possess territory that warrants treatment as mainland. While it was stressed earlier that political status should not exercise a negative effect on the value of islands as basepoints, justice would appear to demand that the status of independence or near-independence should entitle a small island state to all the attributes of mainland. It is difficult to conceive of such a small state being deprived justifiably of shelf and/or seabed merely on the basis of size. While few independent and small insular states are situated in close proximity to other states, the potential exists. With the increasing trend for independence on the part of small areas, the world may well see in the near future many of these entities, which will be limited in territory. Equity should logically demand a maritime domain undiminished by the special circumstance of small-area insularity."

175. By 1981 fourteen island States had claimed exclusive economic zones with the dimension of 200 nautical miles from the pertinent baselines[2]. Numerous other States have in recent years established either exclusive economic zones or exclusive fishery zones of 200 miles in respect of island dependencies[3].

3. CONCLUSION

176. The practice of island States both in relation to the continental shelf and the exclusive economic zone has the features of generality and consistency with reference to the critical point of law: namely, that island States have the same entitlement to shelf rights and economic zones as other coastal States. There is the clearest possible evidence of the absence of any disability in the context of general international law.

177. There is here an analogy with the issues presented to the Court in the *Anglo–Norwegian Fisheries* case. No record has been found of any

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[1] Robert D. Hodgson, in Gamble and Pontecorvo (ed.), *Law of the Sea: The Emerging Régime of the Oceans*, Cambridge, Mass., 1973, p. 137 at p. 186. For other expressions of this view see Padwa, *International and Comparative Law Quarterly*, Vol. 9 (1960), p. 628 at p. 650 and Karl, *American Journal of International Law*, Vol. 71 (1977), p. 642 (footnote 3).

[2] See Annex 21.

[3] See Annex 21.

diplomatic protest or reservation of position in face of the practice of island States – *a practice which begins in 1948* (with reference to rights over continental shelf). To the positive practice of island States since 1948 must be added the general toleration of the international community. In the *Anglo-Norwegian Fisheries* case the reasoning of the Judgment placed emphasis on "the general toleration of foreign States with regard to the Norwegian practice"[1], and "the general toleration of the international community"[2].

178. The evidence is thus overwhelmingly in support of the proposition that island States have a normal entitlement to continental shelf rights. It follows that the position of Malta in these matters is a part of a well-established pattern of practice and a legal tradition, widely accepted within the international community. Moreover, in due course it was recognised in the practice of States that in the case of opposite States abutting upon the same shelf, the appropriate method of delimitation is by means of a median line.

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[1] *I.C.J. Reports 1951*, p. 138.

[2] *Ibid.*, p. 139.

CHAPTER VII

THE PRINCIPLES AND RULES OF INTERNATIONAL LAW APPLICABLE IN THE CONTEXT OF THE PRESENT DELIMITATION

1. Introduction

179. This Chapter sets out the judicial exposition of the key aspects of the law applicable to the present delimitation and examines the State practice relating to delimitation of shelf areas dividing island States from opposite mainlands and to other comparable situations. In addition the relevance of the practice of other States in the Mediterranean region and the conduct of the parties will be indicated.

180. At this point in the exposition it is appropriate to notice the intimate connection between entitlement and delimitation on the basis of equidistance in the case of opposite States, whether or not one or both of the States involved are island States. It is important to recall that two delimitations on the basis of agreement, which took place near the beginning of the sequence of practice in the matter, involved a division of the seabed, either on the basis of equidistance or of equal shares, and involved islands. The first was the Agreement between the United Kingdom and Venezuela relating to the Gulf of Paria in 1942[1] and the second was the Agreement between Bahrain and Saudi Arabia in 1958[2]. The conclusion of these agreements evoked no hint of criticism by States or in the legal literature in respect of the basis of delimitation. Moreover, the background to the delimitation agreement between Bahrain and Saudi Arabia should be recalled. The pertinent legislation of the littoral States of the Gulf had, from the earliest appearance of continental shelf claims, made explicit reference to the determination of seabed boundaries in accordance with equitable principles[3]. The relevant Royal Pronouncement concerning the Policy of the Kingdom of Saudi Arabia, dated 28 May 1949[4], states that "the boundaries . . . will be determined in accordance with equitable principles". The Proclamation made in the case of Bahrain, dated 5 June 1949, refers to the need for determination of boundaries "on just principles"[5]. Still, subject to minor variations, the dividing line between these two States is the median line[6].

2. The Case of Opposite States: The Median Line Effects an Equitable Delimitation

181. The principle that where the coasts of two States are opposite to one another the median line will normally bring about an equitable result

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[1] See below, para. 187 (a).

[2] See below, para. 187 (b).

[3] The legislation is collected in U.N. Legislative Series, *Laws and Regulations on the Regime of the High Seas*, ST/LEG/SER. B/1, 1951, pp. 22-30.

[4] *Ibid.*, p. 22.

[5] *Ibid.*, p. 24.

[6] See below, para. 187 (b).

has been explicitly recognised in all three delimitation cases so far decided by international tribunals. Thus in the *North Sea Continental Shelf* cases the Court made the following observations on the case of opposite States[1]:

> "57. Before going further it will be convenient to deal briefly with two subsidiary matters. Most of the difficulties felt in the International Law Commission related, as here, to the case of the lateral boundary between adjacent States. Less difficulty was felt over that of the median line boundary between opposite States, although it too is an equidistance line. For this there seems to the Court to be good reason. *The continental shelf area off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved.*"

182. In the *Anglo-French Continental Shelf Arbitration* the Court made two significant statements of principle:

> (i) "Whereas in the case of 'opposite' States a median line will normally effect a broadly equitable delimitation, a lateral equidistance line extending outwards from the coasts of adjacent States for long distances may not infrequently result in an inequitable delimitation by reason of the distorting effect of individual geographical features."[2]
>
> (ii) "In a situation where the coasts of the two States are opposite each other, the median line will normally effect a broadly equal and equitable delimitation."[3]

183. The parties in the *Tunisia-Libya Continental Shelf* case did not rely upon the method of equidistance, and the Court did not employ that method of establishing the basis of an alignment. However, in regard to the second sector of the line adopted by the Court in that case, the Court gave clear recognition to the normal applicability of the equidistance method to the case of opposite coasts. The relevant passage is as follows[4]:

> "While, as the Court has already explained (paragraphs 109-110), there is no mandatory rule of customary international law requiring delimitation to be on an equidistance basis, it should be recognised that it is the virtue – though it may also be the weakness – of the equidistance method to take full account of almost all variations in

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[1] *I.C.J. Reports 1969*, p. 36, para. 57. Emphasis supplied. See also the Judgment at p. 53.
[2] *Decision* of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 95.
[3] *Ibid.*, para. 239.
[4] *I.C.J. Reports 1982*, p. 88, para. 126.

the relevant coast-lines. Furthermore, the Court in its 1969 Judgment recognised that there was much less difficulty entailed in a general application of the equidistance method in the case of coasts opposite to one another, when the equidistance line becomes a median line, than in the case of adjacent States (*I.C.J. Reports 1969*, pp. 36–37, para. 57). *The major change in direction undergone by the coast of Tunisia seems to the Court to go some way, though not the whole way, towards transforming the relationship of Libya and Tunisia from that of adjacent States to that of opposite States, and thus to produce a situation in which the position of an equidistance line becomes a factor to be given more weight in the balancing of equitable considerations than would otherwise be the case*."[1]

3. STATE PRACTICE

(1) *The relevance of State practice*

184. By way of preface to the presentation which follows of State practice in the form of delimitation agreements between States, it is pertinent to recall the observations of Judge Padilla Nervo in his Separate Opinion in the *North Sea Continental Shelf* cases[2]:

> "The fact that the equidistance method has been followed in several bilateral agreements between neighbouring States does not mean at all that those States were compelled by the Convention to use the equidistance method. It only means that there was *agreement* between them *because they considered such method satisfactory, fair, equitable and convenient*."[3]

There is an evident value in recourse to the practice of States in like and comparable situations as an objective reflection of the application of equitable principles leading to an equitable result.

(2) *The Case of Island States Opposite Distant Mainlands*

185. The State practice provides an unequivocal demonstration of the persistence of the equidistance method of delimitation in the case of opposite States. It is not the purpose to present all such delimitation practice. The most relevant practice for present purposes concerns island States facing distant mainlands and abutting upon the same shelf. So far as Malta has been able to ascertain there have been seven relevant delimitations on the basis of agreement. These are (in chronological order) described below. The texts of the Agreements appear as Annexes (Annexes 22 to 28). Maps illustrating each of these Agreements, and the Agreements listed later, are also presented in this Memorial.

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[1] Emphasis supplied.
[2] *I.C.J. Reports 1969*, p. 98.
[3] Emphasis supplied.

(a) *Bahrain–Iran, Agreement signed on 17 June 1971*[1]

This instrument establishes the continental shelf delimitation. A glance at the alignment on the map shows that Bahrain did not suffer any reduction of shelf area. In his commentary on the Agreement the Geographer of the U.S. Department of State makes the following remarks:

> "The Bahrain–Iran continental shelf boundary is not based solely on the equidistance principle. Points 1 and 4 were determined by existing continental shelf boundary agreements; the remaining two points are nearly the same distance from Bahrain and Iran, so the assumption can be made that Points 2 and 3 are in fact equidistant points. The continental shelf boundary agreement does not specify that the principle of equidistance was utilised, but rather that the boundary divides the shelf in a 'just, equitable and precise manner'."[2]
>
> "The limits of the Bahrain–Iran continental shelf boundary were constrained by two terminal points which were part of existing continental shelf boundary agreements. The intervening turning points, Points 2 and 3, are apparently based on the principle of equidistance, although the agreement does not state that the equidistance principle was utilised."[3]

This delimitation is based substantially upon equidistance and is an excellent example of a division of shelf areas between an island State and a distant mainland: the distance between the two sets of basepoints averages a little over 100 nautical miles. The United States Department of State Geographer expresses no criticism of the treatment of Bahrain in his papers published in 1974[4] and 1981[5].

(b) *Cuba–Mexico, Agreement signed on 26 July 1976*[6]

The Agreement establishes an equidistance line of 350 miles. In the Exchange of Notes the two Governments agreed that the dividing line affecting both the exclusive economic zones and the continental shelf areas of the Parties should be established "on the basis of the principle of equidistance".

(c) *India–Maldives, Agreement signed on 28 December 1976*[7]

The delimitation concerns both continental shelf and exclusive economic zone. The Geographer of the U.S. Department of State states in his analysis[1]: "The boundary closely approximates an equidistance line". Much of the Maldives group lies at considerable distance from the coast of India.

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[1] U.S. Dept. of State, The Geographer, *Limits in the Seas*, No. 58. Ratifications were exchanged and the agreement entered into force on 14 May 1972.

[2] *Ibid.*, p. 3.

[3] *Ibid.*, p. 5. See also *Limits in the Seas*, No. 93, pp. 2–3.

[4] *Ibid.*, No. 58: *Bahrain–Iran*.

[5] *Ibid.*, No. 94: *The Persian Gulf*.

[6] Text obtained officially through diplomatic channels and translated.

[7] U.S. Dept. of State, *Limits in the Seas*, No. 78.

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(d) *Cuba-United States, Agreement signed on 16 December 1977*[2].

The maritime boundary resulting is an equidistance line with certain minor adjustments. The purpose is to create a dividing line between the maritime jurisdictions of the two States; and in practice this involves division of exclusive economic zones.

(e) *Colombia-Dominican Republic, Agreement signed on 13 January 1978*[3].

Article 1 of the Agreement provides as follows:

> "The delineation of the marine and submarine areas that correspond to each of the two countries shall be effected, in general practice, by using the principle of the median line whose points are all equidistant from the closest points of the baselines whence the extension of the territorial sea of each State is measured."

(f) *Colombia-Haiti, Agreement signed on 17 February 1978*[4].

Article 1 of the agreement provides as follows:

> "The delimitation of the marine and submarine areas of the Republic of Colombia, and of the exclusive economic zone and continental shelf of the Republic of Haiti. It is a median line all the points of which are equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."

(g) *Dominican Republic-Venezuela, Agreement signed on 3 March 1979*[5].

The maritime boundary created is in two segments. Both the western and eastern segments are equidistance lines, the former 108 miles in length.

(3) *Cases of Island States Opposite Non-distant Mainlands*

186. The precedents referred to in the previous section concern delimitations as between island States and *distant* "mainlands" abutting upon the same continental shelf. This relationship obviously bears a very close analogy with the relationship of Malta and Libya. However, there are other examples of State practice which provide strong evidence of the propriety of the equidistance method of delimitation in the case where an

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[1] *Ibid.*, p. 7.

[2] *International Legal Materials*, Vol. XVII (1978), p. 110.

[3] Nordquist, Lay and Simmonds, *New Directions in the Law of the Sea*, VIII, p. 78.

[4] *Ibid.*, p. 76.

[5] *Ibid.*, p. 80.

island State lies off-shore (though not at a considerable distance from) a "mainland" coastal State.

187. The relevant precedents of this type are as follows[1]:

(a) *United Kingdom (Trinidad)–Venezuela*[2]

On 26 February 1942, the Governments of the United Kingdom and of Venezuela signed an Agreement relating to the delimitation of the submarine areas of the Gulf of Paria[3]. The validity of the delimitation has at no time been challenged and the now independent State of Trinidad and Tobago has accepted the alignment. The delimitation concerns areas between opposite coasts abutting upon the same continental shelf. The boundary was not based upon the equidistance principle *as such*, but the resulting delimitation affords equal areas of seabed to each of the parties. Professor Bowett[4] has observed that the boundary is "an excellent example of a median line adjusted for administrative convenience since areas accruing to one party as a result of a deviation from the strict median line exactly balance areas accruing to the other". The significant feature is that the island of Trinidad *as such* was not considered to be under any legal disability and this assumption was made both in 1942 and in the practice of the two coastal States subsequent to the independence of Trinidad and Tobago. Both Venezuela and Trinidad and Tobago have become parties to the Continental Shelf Convention of 1958.

In the case of Venezuela the following reservation was made on signature[5]:

> "In signing the present Convention, the Republic of Venezuela declares with reference to Article 6 that there are special circumstances to be taken into consideration in the following areas: the Gulf of Paria, *in so far as the boundary is not determined by existing agreements*[6], and in zones adjacent thereto; the area between the coast of Venezuela and the coast of Aruba; and the Gulf of Venezuela."

(b) *Bahrain–Saudi Arabia, Agreement signed on 22 February 1958*[7].

This instrument establishes a median line – for such it is in principle,

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[1] The texts of the Agreements are reproduced in Annexes 29 to 34.

[2] U.S. Dept. of State, *Limits in the Seas*, No. 11.

[3] The Agreement entered into force on 22 September 1942

[4] *The Legal Regime of Islands in International Law*, New York, 1978, p. 170.

[5] *United Nations, Multilateral Treaties Deposited with the Secretary-General (Status as at 31 December 1981)*, ST/LEG/SER.E/1, p. 606. At the time of ratification (as opposed to signature) a reservation was made as follows: '. . . with express reservation in respect of article 6 of the said Convention'.

[6] Emphasis supplied.

[7] U.S. Dept. of State, *Limits in the Seas*, No. 12. The Agreement entered into force on 26 February 1958.

READEX FICHE

subject only to certain minor variations – as the continental shelf boundary, and this extends for a distance of 98.5 nautical miles. In his 'Analysis'[1] of the Agreement the Department of State Geographer expresses no surprise or reservation of any kind on the application of the equidistance method. It is worth noting that this approach was consistent with the policy of the Agreement of 1971 governing the delimitation as between Bahrain and Iran[2]. Both agreements show conformity in two significant respects: the application of the equidistance method in the context of opposite States abutting upon the same continental shelf; and the giving of the same weight to Bahrain as to the other coastal States of the region.

(c) *Australia–Indonesia, Agreements signed 18 May 1971, 9 October 1972 and 12 February 1973*

These instruments effect a seabed boundary in the area between Indonesia, Papua New Guinea and Australia. On achieving independence on 16 September 1975, the Government of the latter accepted the validity of the Agreements. The Australian sector of the boundary lies between the trijunction point A3 and extends westward to point A16. Between points A3 and A12 the line is in accordance with equidistance. Westward of point A12 the alignment is a negotiated boundary.

(d) *Indonesia–Singapore, Agreement signed on 25 May 1973*[4].

Whilst this Agreement is concerned to establish a territorial sea boundary, the outcome is, given the geographical circumstances, a maritime boundary for all purposes, involving the shelf-locked island State of Singapore. A study of the text of the Agreement and of the analysis produced by the Geographer of the United States Department of State makes clear the fact that Singapore was not legally disadvantaged in the process of delimitation. In his "summary" of the arrangements agreed upon, the Geographer states the following[5]:

> "The Indonesian–Singapore territorial sea boundary utilises both the equidistant principle (3 turning points) and negotiated positions (3 turning points). Five of the six turning points lie on the Indonesia side of an Indonesia–Singapore median line. Of particular interest is the location of Point 2. This turning point is located inside the Indonesian straight base-line system and is

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[1] *Ibid.*, pp. 3–5.

[2] See above; para. 185(a).

[3] U.S. Dept. of State, *Limits in the Seas*, No. 87, Annexes I and II.

[4] *Ibid.*, No. 60.

[5] *Ibid.*, pp. 4–5.

therefore in Indonesian internal waters. Islands were utilised as basepoints for the construction of the territorial sea boundary."

(e) *India–Sri Lanka, Agreement signed on 23 March 1976*[1].

This instrument is additional to the previous Agreement of 1974[2] establishing an historic waters boundary, which involved the application of the equidistance method with minor modifications[3]. The Agreement of 1976 provides for an equidistance line (with certain minor modifications) both in the Gulf of Manaar and in the Bay of Bengal. The combined maritime boundaries created by the two Agreements total approximately 604 nautical miles.

(f) *Bahamas–United States*

The delimitation of the continental shelf areas between the Bahamas and the coasts of Florida has not been regulated by agreement between the two States. However, the position of the United States in respect of the areas within the Florida Straits, where the relevant coasts are opposite each other, is, it is reported, based on the equidistance method[4].

(4) *Equidistance in the National Legislation of Island States*

188. A considerable number of island States specify in their legislation the method of delimitation on the basis of a median line in relation either to the continental shelf, or to the exclusive economic zone, or to both legal interests, or to an exclusive fishery zone. The pattern of recent legislation shows an ever-increasing tendency for the shelf to be assimilated to the exclusive economic zone for many purposes.

189. The pertinent legislation is as follows (in alphabetical order)[5]:

Bahamas: Fisheries Resources (Jurisdiction and Conservation) Act, 1977[6] (fishery resources of the seabed and subsoil).

Barbados: Marine Boundaries and Jurisdiction Act, 1978[7] (exclusive economic zone).

Comoros: Ordinance No. 76–938/CE, 15 June 1976[8] (exclusive economic zone).

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[1] *Ibid.*, No. 77. The Agreement entered into force on 10 May 1976.

[2] *Ibid.*, No. 66.

[3] *Ibid.*, p. 6.

[4] See Feldam and Colson, *American Journal of International Law*, Vol. 75 (1981), p. 729 at pp. 750–1.

[5] The text of the legislation is reproduced in Annexes 34 to 45 and in Annex 1.

[6] Section 11; U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/19, New York, 1980, p. 179.

[7] Section 3, Act 3, 1978.

[8] Article 3; Nordquist, Lay and Simmonds, *New Directions in the Law of the Sea*, VII, p. 372.

Fiji: Marine Spaces Act, 1977[1] (continental shelf and exclusive economic zone).
Grenada: Marine Boundaries Act, 1978[2] (exclusive economic zone).
Iceland: Law No. 41 of 1 June 1979[3] (continental shelf and exclusive economic zone).
Kiribati: Procalmation of 10 March 1978[4] (fishery limits).
Malta: Continental Shelf Act, 1966[5] (continental shelf).
Nauru: Marine Resources Act, 1978[6] (fishery limits).
New Zealand: Territorial Sea and Exclusive Economic Zone Act, 1977[7] (exclusive economic zone).
Solomon Islands: Delimitation of Maritime Waters Act, 1978[8] (continental shelf and exclusive economic zone).
Tuvalu: Proclamation of 26 October 1978[9] (fishery limits).
Western Samoa: Exclusive Economic Zone Act, 1977[10] (exclusive economic zone).

(5) *Equidistance in National Legislation Relating to Island Dependencies*

190. In addition, several States have produced similar provisions in relation to island dependencies, as follows:[11]

Denmark (Faroe Islands): Order No. 598 of 21 December 1976[12] (fishery limits)
New Zealand (Cook Islands): Territorial Sea and Exclusive Economic Zone Act, 1977[13] (exclusive economic zone)
New Zealand (Tokelau): Tokelau (Territorial Sea and Exclusive Economic Zone) Act, 1977[14] (exclusive economic zone).
United Kingdom (Turks and Caicos Islands): Proclamation No. 4 of 1978[15] (fishery limits).

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[1] Sections 6 and 7, *ibid.*, p. 391.

[2] Section 3; Act No. 20 of 1978.

[3] Article 7; U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/19, New York, 1980, p. 43.

[4] Nordquist, Lay and Simmonds, *op. cit.*, VII, p. 110. Kiribati became independent on 12 July, 1979.

[5] Section 2; U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/16, New York, 1974, p. 156.

[6] Sections 2 and 3; Nordquist, Lay and Simmonds, *op. cit.*, VII, p. 429.

[7] Section 9; Nordquist, Lay and Simmonds, *op. cit.*, p. 440.

[8] Sections 6 and 7; Act No. 32, 1978.

[9] Nordquist, Lay and Simmonds, *op. cit.*, p. 197.

[10] Section 9; Nordquist, Lay and Simmonds, *op. cit.*, VIII, p. 38.

[11] The texts of the legislation is reproduced in Annexes 46 to 49.

[12] Article 1; Nordquist, Lay and Simmonds, *op. cit.*, V, p. 111.

[13] Sections 2 and 8; Nordquist, Lay and Simmonds, *op. cit.*, VII, p. 374; see also Continental Shelf Amendment Act, 1977.

[14] Sections 2 and 7; Nordquist, Lay and Simmonds, *op. cit.*, VII, p. 468.

[15] 24th November 1978; L.N. 14/1978.

(6) *Certain Other Delimitations Involving Major Island Dependencies Opposite Mainlands*

191. These include the following:[1]

(a) *Norway–United Kingdom (Shetland Islands)*

On 10 March 1965 the Governments of the Kingdom of Norway and the United Kingdom signed an agreement for the delimitation of the continental shelf boundary between the two countries[2]. Article 1 of the Agreement specifies that the dividing line is based upon equidistance "with certain minor divergencies for administrative convenience". In his 'Analysis'[3] the Geographer of the U.S. Department of State observes that "the equidistance principle was employed for the entire length of the C.S.B." [continental shelf boundary].

The northern sector of the equidistance line lies between the mainland of Norway and the Shetland Islands and involves turning points 5, 6 and 7, and terminal point 8. This sector is 150 nautical miles in length. The distances between the four points and the land are, respectively, 98, 90, 82 and 87 miles.

(b) *India (Nicobar Islands)–Indonesia (Sumatra)*

The delimitation of continental shelf areas dividing the Nicobar Islands and the large island of Sumatra lying opposite was effected by an Agreement on 8 August 1974[4]. The shelf boundary is based upon equidistance with certain practical and unimportant modifications[5]. The boundary was extended both northeastward and southwestward by an agreement signed on 14 January 1977[6]. Once again the equidistance method was employed. In substance these two delimitations accord full weight to the Nicobar Islands and provide strong evidence for the appropriateness of equidistance in comparable situations elsewhere. It will be noted that the Nicobar Islands do not have the status of an island State.

(c) *United States (Puerto Rico)–Venezuela*

On 28 March 1978 the Governments of the United States and the Republic of Venezuela signed an agreement establishing 'the mari-

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[1] The text of the Agreements is reproduced in Annexes 50 to 54 and Annex 20.

[2] U.S. Dept. of State, *Limits in the Seas*, No. 10 (Revised), p. 2. The Agreement entered into force on 29 June 1965.

[3] *Ibid.*, p. 4.

[4] U.S. Dept. of State, *Limits in the Seas*, No. 62. The Agreement entered into force on 17 December 1974.

[5] *Ibid.*, p. 3.

[6] *Ibid.*, No. 93, pp. 5, 14; also in *Indian Journal of International Law*, Vol. 19 (1979), p. 295. The Agreement entered into force on 15 December 1978.

time boundary' between them[1]. The boundary divides the waters and seabed areas lying between Puerto Rico and Venezuela. The delimitation is based closely upon equidistance and creates segments which are, respectively, median lines between Puerto Rico and certain groups of islands lying off the coast of Venezuela, and median lines between St. Croix Island (United States) and Aves Island (Venezuela)[2]. In so far as the boundary *as between Puerto Rico and the Venezuelan mainland* is not a median line, this is due to the presence of Venezuelan islands. The significance, for purposes of delimitation, accorded to these relatively small Venezuelan islands is consistent with the policy giving appropriate weight to Puerto Rico, subject only to the influence of the intervening Venezuelan islands.

(d) *India (Nicobar Islands)–Thailand*

This continental shelf delimitation of the areas lying between the Nicobar Islands and Thailand was effected by an agreement signed on 22 June 1978[3]. The alignment is substantially based upon equidistance. Consequently, as in the two delimitations between India and Indonesia, the Nicobar Islands have been given full weight in a delimitation *vis-à-vis* the distant mainland. The Thailand coasts lie approximately 230 or 240 miles (in different sectors) away from the baselines and basepoints on the Nicobar Islands.

(e) *Denmark (Faroes)–Norway*

On 15 June 1979 the Governments of Denmark and Norway signed an agreement for the delimitation of the continental shelf between the Faroes and Norway[4]. Article 1 of the Agreement provided as follows:

> "The line of demarcation between the section of the continental shelf in the waters between the Faroes and Norway over which the Kingdom of Denmark and the Kingdom of Norway, respectively, exercise sovereignty in so far as prospecting for, and exploitation of, natural resources are concerned, shall be the median line which is equidistant on every point from the closest points on the base lines whence the width of the outer territorial waters of the contracting parties is measured."

The Faroe Islands are some 310 miles distant from Norway.

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[1] *Ibid.*, No. 91. The Agreement entered into force on 24 November 1980.

[2] See the analysis by Robert W. Smith, *Geographical Review*, Vol. 71 (1981), p. 395 and pp. 406–7. It may be recalled that the author was the official Geographer of the U.S. Department of State.

[3] *Limits in the Seas*, No. 93, pp. 5, 14; also in *Indian Journal of International Law*, Vol. 19 (1979), p. 295. The Agreement entered into force on 15 December 1978.

[4] The Agreement was ratified on 3 June 1980. The text of the Agreement was obtained officially through diplomatic channels. See reduced map at page 38.

(f) *Australia–France (New Caledonia)*

On 4 January 1982 the Governments of Australia and France signed an agreement which effected a major delimitation between the Australian fishing zone and the French Economic Zone and between their respective areas of continental shelf[1]. With respect to New Caledonia, the resulting boundary is an equidistance line more than 1200 miles in length which gives full effect to New Caledonia and, additionally, utilises a number of uninhabited reefs as basepoints.

192. The view of the United Kingdom Government on the issue of principle emerges clearly in a written answer[2] from the Secretary of State for Foreign and Commonwealth Affairs in response to a question relating to advertisements for tenders to drill for oil by the Argentine State petroleum company in relation to areas appurtenant to the Falkland Islands. The Secretary of State expressed the Government's view thus:

> "No agreement has been reached between the U.K. and Argentine Governments on the delimitation of the continental shelf as between the Falkland Islands and Argentina. In the absence of an agreed boundary, neither party, in Her Majesty's Government's view, would be entitled to exercise continental shelf rights beyond the median line between the Falkland Islands and Argentina. We have protested to the Argentines about the YPF tender which does indeed go beyond the median line."

(7) *Equidistance in the Delimitation of Shelf Areas Dividing Island Groups*

193. The rôle of equidistance in the delimitation of areas dividing islands and island groups at some distance from each other is prominent in a number of recent delimitation agreements.[3] The relevant agreements are as follows (in alphabetical order):

(*a*) Cuba–Haiti, Agreement signed on 27 October 1977 (equidistance line dividing exclusive economic zones and continental shelf areas)[4].

(*b*) France (Wallis and Futuna Islands)–Tonga, Agreement signed on 11 January 1980 (median line dividing the economic zones)[5].

(*c*) France (Reunion)–Mauritius, Agreement signed on 2 April 1980 (median line dividing the economic zones)[6].

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[1] Text obtained officially through diplomatic channels.

[2] See *Parliamentary Debates*, House of Lords, Vol. 415, cols. 971–2, 15 December 1980; also in *U.K. Materials on International Law, 1980; British Year Book of International Law*, Vol. 51 (1980), p. 458.

[3] The text of the Agreements is reproduced as Annexes 54 to 60.

[4] Nordquist, Lay and Simmonds, *New Directions in the Law of the Sea*, VIII, p. 69.

[5] *Ibid.*, Vol. 84 (1980), p. 968.

[6] U.S. Dept. of State, *Limits in the Seas*, No. 95. In force: 2 April 1980.

(*d*) New Zealand (Cook Islands)–United States (American Samoa), Agreement signed on 11 June 1980 (establishes a maritime boundary which is an equidistance line)[1].

(*e*) New Zealand (Tokelau)–United States (American Samoa), Agreement signed on 2 December 1980 (establishes a maritime boundary which is an equidistance line).[2]

(*f*) France (Martinique)–St. Lucia, Agreement signed on 4 March 1981 (equidistance line dividing the "respective maritime areas in which the two States exercise sovereign rights")[3].

(*g*) Australia (Heard and McDonald Islands)–France (Kerguelen Islands), Agreement signed on 4 January 1982 (median line dividing the Australian fishing zone and the French Economic Zone, and the respective areas of continental shelf).[4]

194. In the context of delimitation of shelf areas dividing island groups the relations of the New Hebrides (in the period immediately before Independence) and the independent island group of Fiji are of considerable relevance. On 22nd January 1980 the British High Commission and the French Embassy in Suva, Fiji, presented a joint diplomatic Note to the Government of Fiji, which read in part as follows[5]:

> "The Government of the French Republic and the Government of the United Kingdom have taken note of the intention of the Government of Fiji to establish a maritime zone of 200 miles from the baselines from which the breadth of the territorial waters of Fiji is measured.
>
> In view of the forthcoming independence of the New Hebrides and the permanent character which an eventual delimitation of Fiji and New Hebridean 100-mile zones would have, the two Governments consider that any definitive delimitation should be effected after the Condominium régime has ceased to exist by direct agreement between the New Hebridean and Fiji authorities.
>
> However, even in the absence of a definitive delimitation, the establishment by the Government of Fiji of a 200-mile zone does not give rise to any objection on the part of the two Governments, provided that the rights and powers exercised by the Government of Fiji in the zone conform with established international law.

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[1] Text obtained officially through diplomatic channels.

[2] Text obtained officially through diplomatic channels.

[3] *Revue générale de droit international public*, Vol. 85 (1981), p. 654. In force: 4 March, 1981. Another Agreement relating to the delimitation of the Continental Shelf between Martinique (and Guadeloupe) on the one hand and the Venezuelan Islet of Aves bears no comparison with the situation here examined, because the geographical situation is significantly different.

[4] The Agreement is the same as that referred to in para. 191 (*f*) above. This Agreement effected two separate delimitations.

[5] Printed in *British Year Book of International Law*, Vol. 51 (1980), p. 461.

> It is understood that the median or equidistant line, defined in the Department's Note of 27 December 1978, will serve provisionally to delimit the competences exercised respectively in the New Hebrides zone and in the Fiji zone in respect of the sovereign rights recognised by international law for the purposes of exploration and exploitation of natural resources.
>
> In the view of the two Governments, this provisional delimitation is expressly subject to a definitive delimitation which should be undertaken, as set out above, by negotiation between the representatives of the two Governments of the New Hebrides and Fiji."

4. State Practice establishes the Equitable Character of the Equidistance Method in the Present Case

195. In the light of the material set out above it is evident that the practice of States in situations which are legally comparable with the coastal relationships of Malta and Libya gives the strongest possible indication of the appropriateness – the equitable nature – of the method of equidistance in delimitation of the areas of continental shelf which appertain to Malta and Libya respectively. In considering the volume and significance of the State practice, as evidence of the position in accordance with customary or general international law, two factors call for emphasis. First, given the total of sufficiently comparable situations in the world at large, the practice set forth by the Government of Malta constitutes as complete a rehearsal of such material as possible. Secondly, there is a conspicuous absence of practice adverse to the application of the equidistance method in the case of opposite states abutting upon the same continental shelf.

5. The Practice of States in the Mediterranean Region

196. The practice of the coastal States of the Mediterranean has general relevance in so far as it indicates the approach of the States of the region toward the problem of achieving an equitable solution in the setting of semi-enclosed seas of which the Mediterranean basin is composed. The evidence consists of four delimitation agreements, a provisional delimitation, and of course the legislation of Malta, relating to the continental shelf. Thus in sum the practice of six states is involved.

197. The relevant items of practice are as follows:[1]

(a) *Italy–Yugoslavia, Agreement signed on 8 January 1968*[2]

This delimitation involves the application of the method of equidistance with certain modifications to avoid giving too much effect to

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[1] The text of the Agreements is reproduced as Annexes 61 to 64.

[2] U.S. Dept. of State, *Limits in the Seas*, No. 9.

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"the presence of small islands located many miles from the mainland near the middle of the sea".[1] The United States Department of State Geographer remarks that "this Agreement is an example of what has been achieved through negotiation when strict application of the equidistance principle results in a disproportionate division of the shelf between two countries as a consequence of the random location of small islands"[2]

(b) *Italy–Tunisia, Agreement signed on 20 August 1971*[3]

Article 1 provides as follows:–

> "The boundary of the continental shelf between the two countries shall be the median line ... taking into account islands, islets, and low-tide elevations with exception of Lampione, Lampedusa, Linosa and Pantelleria."

Of this delimitation the United States Department of State Geographer remarks: "Italy and Tunisia have agreed that the Italian islands of Pantelleria, Linosa, Lampedusa, and Lampione, *all situated near the Tunisian mainland*[4], constitute a special circumstance."

(c) *Italy–Spain, Agreement signed on 19 February 1974*[5]

This Agreement also bases the shelf delimitation explicitly upon "the criterion of equidistance" (Article 1), and the boundary is thus the median line between Sardinia and Minorca. It is to be noted that Minorca is small compared with the mainland of Sardinia.

(d) *Greece–Italy, Agreement signed on 24 May 1977*[6]

The continental shelf division effected by this agreement is expressly based upon "the principle of the median line", as stated in the preamble and in Article 1.

(e) *Malta: Continental Shelf Act, 1966*[7]

Section 2 of the Act provides that, in the absence of agreement, in the case of states "of which the coast is opposite that of Malta", the boundary of the respective shelf areas shall be the median line.

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1. *Ibid.*, p. 7.
2. *Ibid.*
3. *Ibid.*, No. 89.
4. Emphasis supplied.
5. *Ibid.*, No. 90.
6. U.S. Dept. of State, the Geographer, *Limits in the Seas*, No. 96.
7. Annex 1.

(f) *Italy–Malta provisional demarcation on the basis of a Median Line between the opposite coasts of Sicily and Malta established 1965–70*

The seabed dividing the opposite coasts of Sicily and Malta has been subject to a median line demarcation in practice since the years 1965–70, in the form of a provisional line of delimitation of the continental shelf. The Notes Verbales which constitute the basis of this line of division are as follows: the Note Verbale No. 143/64 by the Ministry of Foreign Affairs of Malta to the Italian Embassy dated 31 December 1965[1]; and the Note Verbale by the Italian Ministry of Foreign Affairs to the Embassy of Malta on 29 April 1970[2]. The existence of the provisional line was confirmed by the Italian Government in a Note Verbale dated 16 March 1981[3], in which the position is stated as follows:–

> "As is well known, as far back as the years 1965–1970, since it was not possible – for contingent technical reasons – to proceed to a negotiated delimitation of the continental shelf between Malta and Italy, it had been agreed that the median line between the aforesaid coasts be considered as the provisional line of demarcation of the said shelf."

Whilst the dividing line adopted at the insistence of the Italian Government was "provisional", the ambit of adjustment envisaged was clearly limited. Thus in the Note Verbale of 29 April 1970 the Italian Government expresses itself in the following manner:–

> "..... the Italian Government, pending a definitive agreement on the matter, considers that a provisional solution is necessary for the area of more immediate interest, namely that between Malta and Sicily, which is not affected by particular problems."

198. The practice set forth exhibits certain common features. The five delimitations all concern opposite states on the same shelf and any adjustment of the equidistance line results from the existence of small islands substantially displaced from the mainland of the State concerned, and in some cases[4] nearer the coast of the other State. The normality and prominence of the equidistance method is consistently evident.

199. Two of the delimitations have a special relevance to the present case. The delimitations between Italy and Spain, and Greece and Italy, both involve the use of a median line as between coasts – and islands – at considerable distances from each other: in the case of Italy and Spain between 180 and 200 miles, and in the case of Greece and Italy between

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[1] Annex 65.

[2] Annex 66.

[3] Annex 67.

[4] See the Italy–Tunisia delimitation, para. 197 (b) above.

42 and 332 miles. Moreover, in the division between Italy and Spain equal value is given both to Sardinia and to Minorca in the constitution of the median line boundary.

200. In the submission of the Government of Malta, the practice of coastal States of the region provides significant indicators as to the proper basis of an equitable solution in the present proceedings.

6. The Conduct of the Parties: the Consistency of Malta's Conduct

201. In the *Tunisia/Libya Continental Shelf Case* the Court gave emphasis to the conduct of the Parties as being "highly relevant to the determination of the method of delimitation".[1] In this context the Court made the following statement: "the history of the enactment of petroleum licensing legislation by each Party and the grant of successive petroleum concessions, during the period from 1955 up to the signing of the Special Agreement, shows that ... the phenomenon of actual overlapping of claims did not appear until 1974". The Court gave weight to the conduct of the parties, the line which the Parties acted upon, as a relevant circumstance.[2] Moreover, it may be recalled that Judge Jessup in a Separate Opinion in the *North Sea Continental Shelf Cases* referred to the need to take account of existing patterns of exploitation of seabed oil under licences or concessions.[3]

202. In the relations of Malta and Libya the conduct of the parties constitutes weighty evidence of the relevant equities to be taken into account in these proceedings. Malta adopted her Continental Shelf Act in 1966[4] on 28 July, and this was published in the normal way. The provisions of the Act (in section 2) stated unambiguously that, in the absence of agreement, the continental shelf boundary "in relation to states of which the coast is opposite that of Malta ... shall be ... the median line ...". The adoption of this legislation on the part of Malta evoked no protest or reservation of rights from the Libyan Government, and no dissenting opinion was indicated by Libyan officials prior to a meeting of delegations in April 1973.[5]

203. On 24 April 1973 the Malta Government Gazette published a Notice inviting applications for Production Licences in the offshore area south of Malta and, in due course, concessions were granted in the period May to November 1974.[6] The concessions granted by Malta naturally observed the median line as a southern limit.[7] The first Libyan con-

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[1] *I.C.J. Reports 1982*, p. 18 and p. 83, para. 117.
[2] *Ibid.*, p. 84, para. 118.
[3] *I.C.J. Reports 1969*, pp. 79-81.
[4] Annex 1.
[5] See above, para. 65.
[6] See above, para. 36.
[7] See Map 3.

cessions in the area which infringed the median line were granted in September 1974.[1] Thus the first disturbance of the *status quo* constituted by Malta's legislation of July 1966 took place in September 1974, and resulted from a Libyan initiative. The conduct of Malta has remained consistent throughout the material period.

204. The grant of concessions which impugned the median line on the part of the Libyan Government forced the Government of Malta to take the steps necessary to protect her legal rights. The corporations licensed by Libya to undertake exploration activities in areas north of the median line were informed of Malta's rights in the relevant areas of continental shelf in letters couched in the clearest possible terms[2].

205. At all stages of the matter Malta has maintained her position based on the legality of the equidistance delimitation and reserved her rights[3]. In contrast to the consistency of the conduct of Malta, which after all has reflected a position based upon legal principle and given due publicity in her legislation of 1966, the Libyan Government has failed to clarify its position on delimitation in the form of any legislation or administrative act. This lack of a public and definitive stance appears to reflect the absence of confidence on its part in any solution, based on legal principle, which differs from that propounded by Malta. This assessment is given strong confirmation by the terms of the letter sent by the Prime Minister of Libya to the Prime Minister of Malta on 19 December 1976[4]. In particular the Libyan Prime Minister adopts the view that no rule of international law on the subject of delimitation had emerged thus far.

206. As the Court indicated in its Judgment in the *Tunisia/Libya* Case,[5] the conduct of the Parties provides evidence of the position in equity as they conceive it to be. In this connection the attention of the Court is respectfully drawn to the Declaration of the Organization of African Unity on the Issues of the Law of the Sea of 19 July 1974.[6] This Declaration includes the following important point of principle:

> "*Regime of Islands*
>
> 5. That the African States recognize the need for a proper determination of the nature of maritime spaces of islands and recommend that such determination should be made according to equitable principles *taking account of all relevant factors and special circumstances*[7] including:

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[1] *Ibid.*

[2] Annexes 9 and 10.

[3] See, for example, (para. 75 above), the terms of the diplomatic Note dated 8 August 1974, from the Government of Malta to the Libyan Ministry of Foreign Affairs.

[4] See above, para. 89.

[5] *I.C.J. Reports 1982*, p.84, para. 118.

[6] *Third United Nations Conference on the Law of the Sea, Official Records* III, p. 63, U.N. Doc. A/CONF.62/33.

[7] Emphasis supplied.

(*a*) The size of the islands
(*b*) Their population or the absence thereof
(*c*) Their contiguity to the principal territory
(*d*) Their geological configuration
(*e*) *The special interest of island states*[1] and archipelagic states."

207. Libya, which was and remains a Member of the Organisation of African Unity, did not oppose this Declaration or place any reservation on record in respect of the statement concerning the regime of islands.

7. Considerations of Stability as an Aspect of an Equitable Solution

208. The practice of States examined in this Chapter of the Memorial provides clear evidence of the important and widespread role of equidistance as a method for producing an equitable solution in the case of delimitations between island States and distant "mainlands" and in other comparable cases of opposite States. That same practice carries an implication of great political and legal significance. Given the number of island States in the world and the high incidence of delimitation agreements involving such States which are based upon equidistance, any solution not predicated upon equidistance would be very likely to lead to a real sense of unease in the international community.

209. It is worth recalling the words of the Court in the *Temple* case (Merits)[2]:

> "In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called in question . . ."

210. The issues in the *Temple* case were not related to the law of the sea but the principle enunciated is surely of general application. Indeed, in his work *The Development of International Law by the International Court*[3], Judge Sir Hersch Lauterpacht referred to "those principles of finality, stability, and effectiveness of international relations, which have charac-

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[1] Emphasis supplied.

[2] *I.C.J. Reports 1962*, p. 6 and p. 34; and see also *ibid.*, p. 60, the Separate Opinion of Judge Sir Gerald Fitzmaurice. See also the *Rann of Kutch Arbitration*, Award, *International Law Reports* (ed. E. Lauterpacht, Q.C.), Vol. 50, p. 2, and pp. 475, 520 (Opinon of the Chairman), pp. 409-10 (Dissenting Opinion of Judge Aleš Bebler).

[3] London, 1958, p. 241. The importance of the achievement of stability and finality has been recognised by various writers: see Jennings, *The Acquisition of Territory in International Law*, Manchester, 1963, p. 70; Cukwurah, *The Settlement of Boundary Disputes in International Law*, Manchester, 1967, p. 121; Anand, *Studies in International Adjudication*, Delhi, 1969, p. 238; Sharma, *International Boundary Disputes and International Law* (Foreword by Judge Nagendra Singh), Bombay, 1976, pp. 2–3.

terised the work of the Court". These broad considerations militate strongly in favour of maintaining a regime of delimitation in respect of shelf rights which is already firmly established in the practice of States in various regions of the world.

8. THE EQUITABLENESS OF EQUIDISTANCE IN THE PRESENT CASE

211. The key elements in the position of Malta relating to the applicable principles and rules of international law in the context of the Special Agreement are these:

(*a*) In the case of opposite States abutting on the same continental shelf, the median line will normally give an equitable result.
(*b*) The practice of States in situations legally comparable with coastal relationships of Malta and Libya establishes the equitable nature of the method of equidistance in dividing the pertinent shelf areas in the present case.
(*c*) The appropriateness of the equidistance method is confirmed by the practice of other States in the Mediterranean region.
(*d*) The conduct of the Parties in the present case and, in particular, the consistency of Malta's conduct, is a relevant consideration in deciding upon the balance of equities.
(*e*) A significant number of delimitations involving island States rely upon the equidistance method and the stability of such existing settlements is an equitable consideration to be given appropriate weight.

CHAPTER VIII

THE PREMISES OF CONTINENTAL SHELF DELIMITATION

1. The Premises of Equitable Delimitation

212. The principles of international law which have relevance to the delimitation of shelf areas dividing the coasts of Malta and Libya will now be examined in two phases. In the first phase the general premises will be set forth and in the second phase attention is given to the equitable principles of particular relevance to the present case.

(a) *The equitable result must reflect the geographical facts in each particular case*

213. This principle has already been developed in Chapter V of this Memorial.

(b) *Where the coasts of two States are opposite each other the median line will normally bring about an equitable result*

214. The key statement of this equitable principle occurs in the Judgment of the Court in the *North Sea Continental Shelf* Cases[1] thus:

> "The continental shelf area off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved."

215. The applicability of this principle to the uncomplicated relationship of the Maltese and Libyan coasts is obvious. The principle involved was of particular prominence in the Judgment in the *North Sea* cases and was restated in the *dispositif*[2] as follows:

> "if . . . the delimitation leaves to the Parties areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally . . . "

216. This principle, which is very similar to the provision which appears in Malta's Continental Shelf Act of 1966, is part of the Court's statement of "the principles and rules of international law applicable to the delimitation" and is one of the two major principles formulated in the

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[1] *I.C.J. Reports 1969*, p. 36, para. 57.

[2] *Ibid.*, p. 53 C (2).

Judgment. The principle was to be reiterated by the Court in the *Anglo-French Continental Shelf Arbitration* in these words:[1]

> "In a situation where the coasts of the two States are opposite each other, the median line will normally effect a broadly equal and equitable delimitation."

(c) *Equity does not necessarily imply the elimination of geographical differences by legal means*

217. The task of equity in delimitation of shelf areas cannot involve the geopolitical role of refashioning geography. The principle was stated by the Court in the *North Sea* cases thus:[2]

> "It is therefore not a question of totally refashioning geography whatever the facts of the situation, but, given a geographical situation of quasi-equality as between a number of States, of abating the effects of an incidental special feature from which an unjustified difference of treatment could result."

218. It is clear that the geographical identity of a normal feature such as an island State cannot constitute an "incidental special feature" either in legal principle or as a matter of political common sense. After all, out of 154 independent States, 38 are island States, a proportion of 25 per cent.

(d) *Even when it is applicable in limine, the concept of natural prolongation is subordinate to the satisfaction of equitable principles*

219. The concept of natural prolongation related to the notion of shelf as "a species of platform"[3] has no relevance to the present case, since the geographical circumstances are not appropriate. It is only in rare cases that the concept of natural prolongation provides an indication of an alignment deriving from the facts of geology.[4] In any case the effect to be given to the concept is dependent not only on the geographical circumstances but also on any relevant circumstances of law and equity.[5] The satisfaction of equitable principles is of cardinal importance, and the identification of the natural prolongation of less importance, in defining an equitable delimitation.[6]

220. As this Memorial has indicated earlier[7], the framework within which an equitable solution is to be sought is not one of geography as such

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[1] Decision of 30 June 1977, *International Law Reports*, para. 239. See also para. 95 of the *Decision* and Vol. 54, p. 6, para. 183 of this Memorial.

[2] *I.C.J. Reports 1969*, p. 50, para. 91.

[3] ***Tunisia-Libya Continental Shelf Case, I.C.J. Reports 1982***, **p. 48, para. 47.**

[4] *Ibid.*, pp. 46–47, para. 44; p. 92, para. 133.

[5] *Anglo-French Continental Shelf Arbitration*, Decision, 1977, para. 194 *in fine*.

[6] *Tunisia–Libya Continental Shelf Case, I.C.J. Reports 1982*, pp. 46–47, para. 44.

[7] Above, Chapter V.

and in the abstract. Consequently, it is the *relationships* of coasts which really count and such relationships have to be weighed in terms of the relevant political facts, which include the status of Malta as an island State.

(e) *The general code of delimitation consists of equitable principles*

221. In the *Tunisia-Libya Continental Shelf* case the Court applied the law in a manner consonant with the formulations in the *North Sea* cases[1] and, indeed, remarked that it was "bound to decide the case on the basis of equitable principles"[2]. In the same paragraph the Court observed:

> "The equitableness of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable result. It is not every such principle which is itself equitable; it may acquire this quality by reference to the equitableness of the solution. The principles to be indicated by the Court have to be selected according to their appropriateness for reaching an equitable result. From this consideration it follows that the term 'equitable principles' cannot be interpreted in the abstract; it refers back to the principles and rules which may be appropriate in order to achieve an equitable result."

2. CERTAIN EQUITABLE CONSIDERATIONS OF PARTICULAR RELEVANCE IN THE PRESENT CASE

222. It is generally recognised that there is no legal limit to the equitable considerations and factors which may be taken into account in achieving an equitable delimitation in each particular case[3]. The jurisprudence of international tribunals makes it abundantly clear that weight may be given to non-geographical elements in achieving an equitable solution. In the *Anglo-French Continental Shelf Case* the Court of Arbitration recognised the significance of the economic, as well as the political, status of the Channel Islands[4]:

> "Possessing a considerable population and a substantial agricultural and commercial economy, they are clearly territorial and political units which have their own separate existence and which are of a certain importance in their own right separately from the United Kingdom ... The political status of the Channel Islands, *vis-à-vis* France for the purpose of the delimitation of the continental shelf is, therefore, a matter to be appraised by this Court itself."

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[1] *I.C.J. Reports 1969*, p. 53, para. 101.

[2] *I.C.J. Reports 1982*, p. 59, para. 70.

[3] *North Sea Continental Shelf Cases*, *I.C.J. Reports 1969*, p. 50, para. 93.

[4] Decision of 30 June 1977, *International Law Report*, Vol. 54, p. 6, paras. 184–185.

Later in the same Award the Tribunal said[1]:

> "... the appropriateness of the equidistance or any other method for the purpose of effecting an equitable delimitation in any given case is always a function or reflection of the geographical *and other relevant circumstances of the particular* case".

223. In the same Award the Court referred to "the legal framework within which the Court must decide the course of the boundary"[2]. Within the legal framework the Court accorded relevance to "the size and importance" of the Channel Islands[3] and stated further[4]:

> "Other elements in the framework are the various equitable considerations invoked by the Parties regarding their respective navigational defence and security interests in the region".

(a) *The Absence of Land-based Energy Resources*

224. The importance to Malta of the petroleum resources of the seabed in the region delimited by her equidistance line cannot be emphasized too much. There are no indications of the existence of any energy resources on the mainland of Malta and this absence of oil, coal and hydro-electric sources is not speculative but is a fact, a permanent state of deprivation.

225. At this point it is to be recalled that in the *Fisheries Jurisdiction* case (United Kingdom v. Iceland)[5] the Court gave legal effect to the concept of preferential rights of fishing in favour of a coastal State "in a situation of special dependence on its coastal fisheries". The analogy with the dependence of Malta upon sea-bed energy resources is obvious and it is equally obvious that Malta cannot in future change her energy prospects. This permanent lack of land-based energy resources, especially bearing in mind the abundance of Libya's petroleum and gas resources, is, without doubt, an equitable consideration or factor relevant to the delimitation of the shelf areas dividing the two Parties. The lack of energy resources on Malta's mainland is not a matter of "unpredictable national fortune"[6].

(b) *The Requirements of Malta as an Island Developing Country*

226. The text of the Law of the Sea Convention of 1982 is inspired by a concern for the well-being of developing countries and for "the realization of a just and equitable international economic order which takes into account ... in particular, the special interests and needs of developing

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[1] *Ibid.*, para. 239. Emphasis supplied.

[2] *Ibid.*, para. 187.

[3] *Ibid.*

[4] *Ibid.*, para. 188.

[5] *I.C.J. Reports 1974*, p. 3, and p. 23, para. 52 and see also paras. 55-68.

[6] *Tunisia-Libya Continental Shelf Case, I.C.J. Reports 1982*, p. 77, paras. 106-107.

countries, whether coastal or land-locked"[1]. The overall concern of the international community with the development requirements of developing countries is, it is submitted, a relevant consideration or factor which must be given proper weight in achieving an equitable solution in the present case.

227. The significance of this particular equitable consideration is evidenced and confirmed by the fact that over the last decade the international community has given explicit and persistent recognition of the category of "island developing countries". Moreover, Malta has been classified as an "island developing country" in a number of pertinent United Nations documents[2].

228. Within the broad framework of the Second UN Development Decade and the work of the UN Conference on Trade and Development (UNCTAD), the idea began to surface in 1972 that island developing countries constituted a special category of States entitled to assistance from more fortunate countries. International recognition of this concept and its implications may be demonstrated by a chronological description of some of the earlier stages of this development.

(i) In 1972 the UNCTAD conference promoted an expert study of the problems of developing island countries (Resolution 65 (III)). Within the range of population categories of large and medium, small and very small, this study identified Malta as small in territory and very small in terms of population[3].

(ii) The Declaration on the Establishment of the New Economic Order adopted by the UN General Assembly in Resolution 3201 (S-VII) on 1 May 1974 contained in Article 4 a statement of the principles on which the new international economic order should be founded. This included:

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[1] See the preamble; and see also the incorporation in Part II of the Convention of the concept of the 'common heritage of mankind'.

[2] See Table 23 appended to the 1976 Report of the UNCTAD Secretariat on *Action on special measures in favour of the least developed among the developing countries, the developing island countries and the developing land-locked countries: policy issues and recommendations.* (Proceedings of the U.N. Conference on Trade and Development, Fourth Session, Vol. III, p. 188). This Table, which is reproduced in Annex 68, classifies developing island countries by population, income levels, land area and distance from the nearest continent. Within this classification Malta appears as "small" in population and "very small" in territory. In June 1977, the Secretary-General of the UN reported, in relation to island developing countries, that the operations under the UN Development Programme for Malta

> "were severely curtailed for lack of resources and an extra year was required to complete the projects included in it. Some of the projects current and planned relate to the island situation of Malta and, in particular, to the transformation of its economy with respect to civilian activities in the Malta dockyard as well as to the development of fisheries and to offshore drilling". (U.N. Doc. A/32/126, para. 37).

[3] *Developing Island Countries*, TD/B/443/Rev. 1.

> "(c) Full and effective participation on the basis of equality of all countries in the solving of world economic problems in the common interest of all countries, bearing in mind the necessity to ensure the accelerated development of all the developing countries, while devoting particular attention to the adoption of special measures in favour of the least developed, land-locked and *island developing countries* as well as those developing countries most seriously affected by economic crises and natural calamities, without losing sight of the interests of other developing countries."

(iii) Again, in the Programme of Action on the establishment of the New International Economic Order by the UN General Assembly on the same day as the previous resolution (Resolution 3202 (S-VI)), the section on "Food" proposed that "All efforts should be made", *inter alia*,

> "(f) To ensure that developing countries can import the necessary quantity of food without undue strain on their foreign exchange resources and without unpredictable deterioration in their balance of payments, and, in this context, that special measures are taken in respect of the least developed, land-locked and *island developing countries* as well as those developing countries most seriously affected by economic crises and natural calamities";

(iv) Later in the same year, the Charter of Economic Rights and Duties, contained in UN General Assembly Resolution 3281 (XXIX), 12 December 1974, included a reference to island developing countries in Article 25:

> "In furtherance of world economic development, the international community, especially its developed members, shall pay special attention to the particular needs and problems of the least developed among the developing countries, of land-locked developing countries and also *island developing countries*, with a view to helping them to overcome their particular difficulties and thus contribute to their economic and social development".

(v) On 17 December 1974 the UN General Assembly adopted Resolution 3338 (XXIX) in the following terms:

> "The General Assembly,
> Recalling resolution 65 (III) of 19 May 1972 of the United Nations Conference on Trade and Development and Trade and Development Board resolutions 101 (XIII) of 8 September 1973 and 108 (XIV) of 12 September 1974.
>
> Recalling further General Assembly resolution 3202 (S-V) of 1 May 1974, containing the Programme of Action on the Establishment of a New International Economic Order, in which the

Assembly, *inter alia*, called upon the international community to assist the developing countries while devoting particular attention to the least developed, land-locked and *island developing countries*[1] and those developing countries most seriously affected by economic crises and natural calamities leading to serious retardation of development processes.

Recalling also Economic and Social Council decision 28 (LVII) of 2 August 1974 on the special economic problems and development needs of geographically disadvantaged developing island countries.

1. Invites the executive heads of the organizations concerned within the United Nations system, particularly those of the United Nations Conference on Trade and Development, the United Nations Development Programme, the United Nations Industrial Development Organization, the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the International Civil Aviation Organization, the World Meteorological Organization, the Inter-Governmental Maritime Consultative Organization, international financial institutions, regional development banks and the regional commissions, to intensify their efforts with respect to *developing island countries*[1] within their fields of competence, bearing in mind the aforementioned resolutions;

2. Calls upon the Secretary-General to take effective measures towards meeting the needs of the *developing island countries*[1] in accordance with the Programme of Action on the Establishment of a New International Economic Order;

3. Urges all Governments, in particular those of the developed countries, within the context of their assistance programmes, to consider extending appropriate financial and technical assistance to *developing island countries*[1], especially for the expansion of their transportation and communication facilities and *the development of their marine resources;*[1]

4. Requests the executive heads of the United Nations organizations concerned to report on the implementation of the present resolution to the Economic and Social Council at its fifty-ninth session, through the Committee on Review and Appraisal at its 1975 session, within the context of their reporting in relation to the mid-term review and appraisal of the International Development Decade and in preparation for the special session of the General Assembly devoted to development and international economic co-operation, to be held in September 1975".

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[1] Emphasis supplied.

229. This process of re-affirmation and application of the concept of "developing island countries" continued undiminished in the following years. The years 1976 to 1982 saw a flow of UNCTAD studies, United Nations General Assembly resolutions, and other items, dealing with the subject; and the relevant material is annexed to the present Memorial[1].

230. The concept of "island developing countries" has wide implications but for present purposes its significance lies in the international and universally accepted certification which it provides for the development needs of Malta. In the context of continental shelf delimitation, the absence of land-based resources, coupled with the presence of petroleum in the area in issue, provides substantial justification for the view that the development requirements of Malta constitute an equitable consideration or factor to be given weight in the delimitation of the shelf areas dividing Malta and Libya. The Government of Malta is confident that the Court, as the principal judicial organ of the United Nations, will readily recognize the relevance of the practice of the organs of the United Nations and of the Member States in relation to island developing countries.

(c) *The Geographical Range of Fishing Activity*

231. In view especially of the close link existing in modern international law between continental shelves and exclusive economic zones, factors which are relevant to the exploitation of biological resources must be given weight as an equitable consideration. Some reference has already been made[2] to the established patterns of Maltese fisheries stretching southwards to the equidistance line and even beyond it.

(d) *The Element of National Security in Control of Adjacent Submarine Areas*

232. The apron of jurisdiction which a coastal State has over adjacent submarine areas constitutes a necessary attribute of national security. The importance of the exercise of political authority by the coastal State has been emphasized already in this Memorial[3] and it only remains for Malta to point out that security interests form a relevant consideration for purposes of an equitable delimitation of appurtenant shelf areas[4]. For purposes of control and the maintenance of security, Malta has a need for a lateral reach of control from its coastline which cannot be less than that of Libya. Moreover, the importance of this consideration is increased substantially as a consequence of Malta's status of neutrality[5]. It is, of course, obvious that the need for security, reflected in the lateral reach of jurisdiction, bears no relation to the *length* of the coasts of the particular State.

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[1] Annex 68.

[2] See above, paras. 41-45.

[3] See above, paras. 143-149.

[4] See Note 3 to para. 223 above.

[5] The factual background has been outlined above, paras. 58-61.

3. A RESUMÉ OF THE EQUITABLE PRINCIPLES AND CONSIDERATIONS RELEVANT TO THE PRESENT CASE

233. In accordance with the precept stated by the Court in the *Tunisia-Libya* case that the test of the applicability of a given principle is its appropriateness for reaching an equitable result, and in the light of the previous jurisprudence of the Court, the Government of Malta will formulate the equitable principles (and the relevant circumstances) of particular relevance in the present case. Such principles constitute a part of the "principles and rules of international law" which are applicable to the delimitation of the seabed areas dividing the coasts of Malta and Libya.

234. The equitable principles and relevant circumstances of particular relevance are as follows:-

(*a*) The area relevant for the delimitation constitutes a single continental shelf as the natural prolongation of the land territory of both Parties, so that in the present case, no criterion for delimitation of shelf areas can be derived from the concept of natural prolongation.[1]

(*b*) The general configuration of the coasts of the Parties involves a coastal relationship of opposite coasts set at a considerable distance from each other, and the absence of any special or unusual features.[2]

(*c*) In the presence of opposite coasts and the absence of displaced islands or other unusual features, the equitable solution must be based upon the method of equidistance.[3]

(*d*) Malta is a State and its status as an island State is not a justification for discrimination in matters of delimitation.[4]

(*e*) The conduct of the Parties is a relevant circumstance in determining the method of delimitation.[5]

(*f*) Economic considerations are to be taken into account with particular reference to the absence of land-based energy sources in Malta.[6]

(*g*) A further relevant consideration, related to the absence of land-based energy resources in Malta, especially in view of the abundance of such resources available to Libya, lies in the development needs of Malta (evidenced, *inter alia*, by her status as a developing island country)[7].

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[1] Cf. the *Tunisia-Libya Continental Shelf Case, I.C.J. Reports 1982*, p. 92; and see the *North Sea* Cases, *I.C.J. Reports 1969*, pp. 53–54, which refers to "the physical and geological structure and natural resources, of the continental shelf areas involved".

[2] See above, para. 114.

[3] See above, paras. 181–183, for the judicial authorities.

[4] This aspect of the problem is expounded above, Chapter VI.

[5] This aspect of the case is examined above, Chapter VII, paras. 201–207.

[6] This aspect of the case is examined above in Chapter VIII paras. 224–225.

[7] See above, paras. 226–230.

(*h*) The patterns and range of established fishing activity are to be given weight as a relevant equitable consideration.[1]

(*i*) The element of national security involved in control of the adjacent submarine areas also constitutes a relevant consideration.[2]

(*j*) The stability of existing settlements based upon equidistance is an equitable consideration in the present case, and in any case it is the general policy of international law to achieve stability and finality in matters of delimitation.[3]

(*k*) In the geographical circumstances presented by the present case, a departure from the equidistance method would involve a massive breach of the principle of non-encroachment.[4]

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[1] See above, paras. 41-45 and para. 231.

[2] See above, paras. 143-149 and 232.

[3] The point is expounded more fully in paras. 208-210, above.

[4] The point is expounded more fully in paras. 240-243, below.

CHAPTER IX

THE APPROPRIATE METHOD OF DELIMITATION

1. MALTA'S CLAIM TO A MEDIAN LINE

235. The exposition of the principal elements of equity, the relevant equitable principles in this case, is undertaken elsewhere in this Memorial.[1] The purpose of this chapter is to give a more detailed articulation of the legal justification for the median line delimitation adopted by Malta in the Continental Shelf Act enacted in 1966. The baselines and basepoints employed in the construction of the median line boundary have been described in Chapter I above.

2. THE TEST OF APPROPRIATENESS

236. The appropriateness of the given method of delimitation depends upon the result, and the delimitation must lead to an equitable solution. The primary guide to equity is the geographical configuration and in the case of opposite coasts the normally applicable method is that of equidistance and the drawing of the median line.

237. In the words of the International Court in the *North Sea Continental Shelf* cases:[2]

> "The continental shelf off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved . . ."

238. In the circumstances of the present case, no intervening islands or other minor and casual features of the geography of the area create any complications. No distorting effect needs to be eliminated or abated. No Maltese islands lie near the Libyan coast and no outlying Libyan islands are to be found. Thus in the *Anglo-French Continental Shelf* Case[3] the Court adopted the following position:

> "In the English Channel, leaving aside the particular situation resulting from the Channel Islands being located off the French coast, the geographical and the legal frame of reference for determining the course of the boundary of the continental shelf is patently that of a delimitation between 'opposite' States."

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[1] See in particular Chapter VIII, and the other parts of the Memorial referred to therein.

[2] *I.C.J. Reports 1969*, p. 36, para. 57.

[3] Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 103.

239. In the *Dispositif* in the *North Sea* Cases Judgment[1] the Court stated, as one of "the principles and rules of international law" applicable, the principle that, when areas of the shelf "overlap", these are "to be divided . . . equally" in the absence of agreement between the Parties. This important judicial pronouncement, which was made in the context of customary international law, provides an emphatic confirmation of the legality of the median line constituted by Malta's Continental Shelf Act of 1966.

3. THE PRINCIPLE OF NON-ENCROACHMENT NECESSITATES USE OF THE EQUIDISTANCE METHOD

240. In the *North Sea* cases the Court stated[2] that "delimitation was to be effected . . . in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other". Moreover, in several passages the Judgment refers to the effect of "cut-off" which results from the use of equidistance in certain geographical situations[3], especially when the equidistance line swings laterally across the "coastal front" of one State.

241. The principle of non-encroachment was reaffirmed in the *Anglo-French Continental Shelf Arbitration*[4], and again in the Judgment in the *Tunisia-Libya* case,[5] though in the form of an *obiter dictum*, and remains a fundamental aspect of the law relating to continental shelf delimitation.

242. In the geographical circumstances presented by the present case, a departure from the equidistance method of delimitation would involve a massive breach of the principle of non-encroachment. Malta's coasts count as much as the coasts of other opposite States in terms of the generation of continental shelf entitlement. The concept of non-encroachment directly reflects the idea that the shelf is a prolongation of the land territory under the sea. Moreover, it is the *location* of Malta as an island State *distant* from the Libyan coastline which justifies and, indeed, necessitates the use of equidistance.

243. The position is better understood by a perusal of the sketch map ⑫ (Figure A), which clarifies the coastal relationships of Malta and Libya *inter se*. The hatched areas, I and II, indicate the areas of shelf which, according to the judicial metaphor in the *North Sea* Cases, may be said to "overlap". These are areas forming part of a single geological continuum

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[1] *I.C.J. Reports 1969*, p. 53, para. 101.

[2] *Ibid.*, p. 53, para. 101, and also p. 47, para. 85(c).

[3] *Ibid.*, p. 17, para. 8, p. 31, para. 44, p. 37, para. 58.

[4] *International Law Reports*, Vol. 54, p. 6, para. 85.

[5] *I.C.J. Reports 1982*, p. 62, para. 76. See also the Separate Opinion of Judge Jiménez de Aréchaga, *ibid.*, pp. 116–117, paras. 57–59; pp. 118–122, paras. 65–76; p. 132, para. 103.

and, apart from the baselines and coasts of the Parties, the western and ⑫ eastern limits (shown on Figure A) are notional indications of the simple idea that the hatched areas divide the coasts of the two Parties. In other words the areas *either* face Malta *or* Libya and constitute shelf areas "off, and dividing, opposite States". In this situation the problem of encroachment met with in the case of *laterally adjacent* States cannot arise. In the case of *opposite* States the median line provides the logical and equitable response to the need to avoid encroachment on the natural prolongation of the land territory of each Party.

4. The Trapezium as the Equitable Reflection of the Equidistance Method

⑬ 244. The attention of the Court is respectfully drawn to Figure B in the text of this Chapter. The illustrative sketch there displayed is formed on the basis of a quadrilateral having only one pair of its opposite sides parallel, in other words, on the basis of a trapezium. This figure provides a means of understanding the equitable solution resulting from the use of a median line in the division of the areas of shelf lying between Malta and Libya. In the trapezium figure the two parallel sides represent the coast of opposite States.

245. The equitable solution which the law calls for is the product of the coastal configuration and the other relevant circumstances. The key elements in the coastal relationships of Malta and Libya are as follows:-

(*a*) The *distance* between Malta and the Libyan coastline; and since it is *relationship* which is the key, it is precisely the distance, in conjunction with the location of Malta and the long regular coast of Libya, which is the significant factor.

(*b*) The *location* of the Malta group of islands and the opposite relationship thereof to the Libyan coastline produces a particular effect: a critically located Maltese group of islands supports a sufficient number of control points.

(*c*) The extensive *west-east reach* of the Libyan coastline, in conjunction with the "set back" *location* of Malta, results in a trapezoidal figure: that is to say, the Libyan coastal extent is appropriately reflected in ⑬ the southern segment of the trapezium (Figure B, Zone 2), and the equidistance method of delimitation places equitable limits upon the latitudinal and southerly reach of the Maltese continental shelf entitlement (Figure B, Zone 2). The median line constitutes a natural northern boundary to the southern segment of the trapezium.

246. The relationship of the two sets of coastlines is, generally speaking, trapezoidal, since the west-east extension of the Libyan coastline provides a broad wedge of shelf which is the base of the trapezium, and the Maltese entitlement (so far as it has a relationship with *Libyan* coasts) provides the upper segment of the trapezium. The natural limits of the

Maltese relationship with the *Libyan* coasts create a "drawing in" of the western and eastern sides of the trapezium. The consequence is that the principle of appurtenance is observed and the different areas of shelf relate in the legally appropriate way to the relevant coasts of Libya and Malta respectively.

247. The result is in complete conformity with the principle of non-encroachment. If Libya were to be allowed shelf rights north of the equidistance line, such a delimitation would involve massive encroachment on seabed areas lying off Malta but not lying off Libya. In this situation the problem would not be a minor "cut off" effect but a large-scale overtaking or excision of continental shelf not related to Libyan coasts. It follows both as a matter of equitable principles and of ordinary logic that *within the zones between the two coastlines* only equidistance can produce an equitable solution.

5. THE RELEVANCE OF THE DISTANCE PRINCIPLE IN CONFIRMING THE LEGALITY OF THE MEDIAN LINE

248. The areas of continental shelf between the coasts of Malta and Libya form part of a geological continuum and the principle of natural prolongation thus does not provide a criterion of delimitation. Moreover, the coasts and coastal relationships are essentially simple and the two States are opposite each other at a considerable distance. As a result the coastal configurations have a direct effect on the delimitation and this effect is confirmed and reflected by the principle of distance, i.e. the concept that continental shelf rights are generated up to a certain distance from the coast irrespective of the geology, geomorphology and bathymetry of the submarine area.

249. The increase in the rôle of a distance criterion, or principle of distance, in general international law is evidenced by the large number of States which have established an exclusive economic zone of 200 miles extension from the baselines. It is evidenced also by the draft articles produced in the course of the Third United Nations Conference on the Law of the Sea[1].

250. In Articles 76 and 83 of the Convention on the Law of the Sea, clear recognition is given to the criterion of distance. Thus, Article 76, paragraph 1, contains the following formulation:

> "The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer

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[1] See the first such draft: Informal Single Negotiating Text, 7 May 1975, Article 46 (exclusive economic zone); Article 62 (continental shelf); *Third United Nations Conference on the Law of the Sea, Official Records*, Vol. IV, p. 137, Doc. A/CONF.62/WP.8.

> edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."

251. In the *Tunisia-Libya Continental Shelf* case,[1] the International Court noted that the criterion of natural prolongation had been modified (in the provisions concerned) by the "criterion" of "the distance of 200 nautical miles". It is evident that in that case the Court held the view that the "distance principle" – the terminology used by the Court – was an aspect of the recent trends in general international law. It is equally clear that the Court considered the principle of distance to be relevant in a situation in which the principle of natural prolongation did not provide criteria of delimitation.[2] The principle was set aside simply because the Parties in that case had not relied upon any argument relating to the distance principle. Of the existence of the "trend" towards the principle, however, the Court had no doubts. In his Separate Opinion in the *Tunisia-Libya* Case Judge Jiménez de Aréchaga expressed the view that "the distance test of 200 miles" had "already crystallised as a rule of customary international law".[3]

252. In his Dissenting Opinion in the *Tunisia-Libya* Case Judge Oda adopted the same view of "the criterion of the 200 mile distance". In his conclusion to a consideration of "new trends in the concept of the continental shelf", Judge Oda stated[4]:

> "Thus in the upshot the actual regime of the continental shelf is represented as remaining in 1981 exactly the same as in 1958. Yet it cannot be over-emphasized that, in parallel with the change in the outer limit of the continental shelf, the notion of natural prolongation by which the concept of the continental shelf was embellished in the 1969 Judgment has greatly lost its significance, particularly with the introduction of the criterion of the 200-mile distance under the strong influence of the concept of the exclusive economic zone ... not to mention the parallelism between that zone and a possible inner-continental shelf of 200 miles, coupled with the possibility of a different regime applying to the continental margin beyond that distance. In spite of the provision of Article 77 relevant to the rights of the coastal State (which is essentially identical to that of the 1958 Convention), as mentioned above, the concept of the continental shelf cannot have escaped change as a result of the fading-away of the geomorphologi-

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[1] *I.C.J. Reports 1982*, p. 48, para. 47.

[2] *Ibid.*, para. 48.

[3] *Ibid.*, pp. 114-115, paras. 51-53 (para. 52, in particular).

[4] *Ibid.*, pp. 211-222, paras. 89-107, at p. 222, para. 107; and see also the passage at p. 253, para. 151.

> cal notion of natural prolongation. This notion may be said to have remained in the case where the (geomorphological) continental shelf or slope extends farther than 200 miles, yet it must be said that the concept of the continental shelf, which had been sustained by scholarly views and the imperious necessities of the 1950s, has, early in the 1980s, changed."

253. In their Opinions Judge Jiménez de Aréchaga,[1] Judge Oda,[2] and Judge Evensen,[3] stress the strong influence on shelf delimitation of the concept of the exclusive economic zone. In this connection Judge Evensen makes the following observation:[4]

> "When neighbouring States claim functional sovereign rights up to 200 miles – be they opposite States or adjacent States — their claims are based on a *distance criterion*.[5] This very fact seems to strengthen the equidistance/median line principle as an equitable approach for delimiting overlapping areas."

254. The dominant element in recent State practice is the relation of coastal geography and the 200 mile criterion of distance. Much recent legislation[6] assimilates the regime of shelf rights and the exclusive economic zone. The consequence is that, as between opposite States at a distance of less than 400 miles, an island State receives the appurtenant areas, subject only to division on the basis of median line, in accordance with the normal operation of legal principle as demonstrated earlier in this Memorial.

255. The last proposition calls for some amplification. If it be supposed that Malta were an island State in the Atlantic Ocean lying *more than* 400 miles off Portugal, and not abutting upon the same continental shelf, it would be obvious that Malta would then have a 200-mile continental shelf (or exclusive economic zone, if such a zone were claimed), together with any natural prolongation beyond that limit. If it be now supposed that the hypothetically displaced Malta were *less than* 400 miles from the Portuguese coastline, according to the distance criterion (and either *qua* continental shelf or *qua* exclusive economic zone) Malta would have a full complement of pertinent legal rights (measured of necessity in accordance with equidistance). Moreover, this would be so *whether or not the geological shelf was continuous between hypothetical Malta and Portugal.*

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[1] *Ibid.*, p. 115, paras. 54-56.

[2] *Ibid.*, pp. 222-267, paras. 107-176; and p. 270, para. 182.

[3] *Ibid.*, pp. 283-288, paras. 7-10.

[4] *Ibid.*, p. 296, para. 15.

[5] Emphasis in the original.

[6] See above, paras. 189 and 190.

6. THE IRRELEVANCE OF PROPORTIONALITY IN THIS CASE

256. As Malta has already explained[1], the factor or criterion of proportionality is not applicable in the case of opposite States, and in any case the factor can only operate within the general context of equitable principles and in relation to the goal of achieving an equitable solution.[2] The major relevant circumstance, and one which must far outweigh the consideration of proportionality, is the status of Malta as an island State opposite Libya and, consequently, as an abutting coast with full continental shelf entitlement. The view of the Government of Malta is that the factor of proportionality is irrelevant in the circumstances of the present case.

257. The Judgment of the International Court in the *Tunisia-Libya Continental Shelf* case emphasises, more than once, that in the context of proportionality, "the only absolute requirement of equity is that one should compare like with like".[3] The rôle of proportionality varies considerably from case to case, just as the geographical and other relevant circumstances of each case are necessarily specialised. The *legal* approach involves the abatement of minor causes of distortion in the alignment dictated by the major geographical data of the case, but "there can never be any question of completely refashioning nature"[4]. Equity cannot remedy natural differences. In fact the effect of the difference between the west-east reach of the Maltese and Libyan coastlines leaves Libya *with a very large part of the shelf areas between the two opposite coasts.*

258. As a matter both of legal principle and the legal policy of promoting stability in delimitation, the factor of proportionality is inapplicable in the case of opposite States. This view is supported both by the practice of States and by doctrine. Thus an authoritative writer on the law of the sea, Professor Bowett, has expressed the view that the "proportionality factor" does not apply to the case of "opposite" States. With reference to the "factors" set forth by the Court in the *North Sea Continental Shelf* Cases[5], Professor Bowett expressed himself as follows[6]:

> "The relevance of the proportionality factor is more difficult to assess. Clearly, it is entirely subservient to the primary criterion of 'natural prolongation', so there can be no justification for ignoring the geological evidence and simply dividing the shelf according to coastal ratios. Nor, indeed, are such ratios to be calculated on actual coastal

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[1] See above, paras. 128–130.

[2] *Anglo-French Continental Shelf Arbitration*, Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, paras. 98–101.

[3] *I.C.J. Reports 1982*, p. 76, para. 104; and see also *ibid.*, p. 91, para. 130.

[4] *North Sea* Cases, *I.C.J. Reports 1969*, pp. 49–50, para. 91.

[5] *Ibid.*, pp. 53–54.

[6] *The Legal Regime of Islands in International Law*, (1978), p. 164.

length, for the Court envisaged a 'coastal front', a line of general direction to the coast rather than a line following its sinuosities (so that islands may count for this purpose, as part of such 'front'). *Indeed, it would seem that the proportionality factor might only be applied, or be meaningful, in the case of adjacent States (not 'opposite') where the existence of a markedly concave or convex coastline will produce a cut-off effect if the equidistance principle is applied:*[1] that is to say, will allocate to one State shelf areas which in fact lie in front of, and are a prolongation of, the land territory of another."

7. THE EQUITABLE SOLUTION INDICATED IN STATE PRACTICE IS THE MEDIAN LINE

259. The State practice is significant and provides cogent evidence of the views of States on the application of equitable principles in delimitation. Twelve agreements[2] involving an island State opposite a mainland were concluded in the period subsequent to[3] the decision of the International Court in the *North Sea Continental Shelf* cases in 1969, and these all involve either express reliance upon the equidistance method or substantial application of a median line solution in practice. These agreements constitute compelling evidence that island States are not subject to reduction of their continental shelf entitlement on the ground that the equidistance method is incompatible either with equitable principles (as a whole) or with the factor of proportionality (in particular).

260. In Chapter VII of the present Memorial the relevant State practice was surveyed. In particular, reference was made to bilateral delimitations concerning island States facing distant "mainlands" and abutting upon the same shelf. The delimitation agreements listed involve eleven different coastal States of various regions of the world: Western Europe, the Indian Ocean, the Arabian (or Persian) Gulf, and the Caribbean Sea. Naturally, the cases listed are *ex hypothesi* limited in number, since the situations which are comparable are restricted. In addition, if regard is had to agreements involving both distant and non-distant mainlands, then it will be found that seventeen different coastal States are involved.

8. THE MEDIAN LINE IS THE LEGALLY APPROPRIATE DELIMITATION

261. In accordance with international law and the equitable principles and relevant circumstances pertinent to this case, the appropriate method of delimitation is the median line between the pertinent baselines. This

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[1] Emphasis supplied.

[2] See above, paras. 185 and 187.

[3] With the exception of the Bahrain-Saudi Arabia Agreement of 1958.

solution involves an equitable division in the light of the geographical and other legally relevant circumstances of the case. As the figure of the equitable trapezium demonstrates, the division by means of a median line takes into account the length of Libya's coastline and allows Libya a very generous part of the shelf areas dividing Malta and Libya. The equitable character of the equidistance method is confirmed by the delimitation practice of States relating to comparable situations, and also by the prominence of the distance principle in contemporary international law.

CHAPTER X

THE EQUITABLE SOLUTION

1. THE NECESSARY CONCLUSION

262. The application of the legal principles governing delimitation of the continental shelf to the circumstances of the Malta-Libya geographical and geological relationships leads ineluctably to an equitable solution on the basis of equidistance. The geographical circumstances require the use of equidistance. The coasts of the Parties are opposite, and in the case of opposite coasts the normal means of achieving an equitable result is the use of a median line. This is particularly so when there are no intervening islands or other abnormal geographical features.

263. There is in legal terms a complete absence of abnormal geographical features in the present case. There is nothing unusual in the existence of an island State; and the Mediterranean and Caribbean Seas and the Indian and Pacific Oceans encompass a good number of island States[1]. Nor is there anything unusual about the Libyan coastline, which is obviously free from abnormalities. Moreover, the *relationship* of the Maltese and Libyan coastlines is quite unremarkable. As a matter of principle, only unusual features, which involve serious departures from the primary elements in the geographical framework, can be subjected to the process of abatement on equitable grounds. To resort to adjustments where nothing in the geographical situation justifies it would be to refashion geography and would involve a crude process of apportionment.

264. The key elements in the geographical configuration are the *relationships* of the coasts concerned, including the *distance* and *location* of the respective coastal fronts. In the present case the length of coastlines is of little or no consequence for the law of delimitation. In the context of the continental shelf in an area of relatively open sea – such as that between Malta and Libya – modest sectors of abutting coast may have an extensive controlling effect. Given the coastal and sea relationships, only the method of equidistance produces an equitable solution.

2. THE SIGNIFICANCE OF ISLAND STATES

265. International law recognises that all coastal States have the same entitlement to continental shelf rights. The island State is not placed under any legal disability. Geography cannot be reordered. Moreover, in the context of delimitation the political geography is a part of the "geographical configurations" which count for legal purposes. Thus coast-

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[1] As already shown (para. 23, below) there are some 38 island States or 25% of the international community.

lines and islands must be evaluated in terms of the placing of land boundaries, the location of islands in relation to coasts of a different sovereignty, and the political status of the islands in question as independent (or nearly so) or as mere dependencies.

266. It must follow that the existence of a homeland, even consisting exclusively of a single island or a compact island group, draws in its train certain legal consequences. After all, "the land dominates the sea" in the legal philosophy of the continental shelf. The coasts of the island State, like most of any other State, support basepoints which control an appropriate area of shelf. These effects are the consequence of what is in legal terms perfectly *normal* geography and of the primary political and geographical elements there present. Malta, as an island State set at a considerable distance from the North African coast, has its appurtenant shelf and Libya has the shelf areas corresponding to its own coastline. The political geography is clear. No claim is made to deprive Libya of her appurtenant rights: and the fact that Malta is an island cannot justify the undoing of the frontier of equidistance.

267. The difference in the geographical identity of the two States produces neither a privilege nor a disability in relation to the entitlement of Malta.

3. THE DELIMITATION OF AREAS DIVIDING OPPOSITE STATES

268. One of the major principles of the law of delimitation is the principle of non-encroachment, and the concept of non-encroachment is another form of the principle of natural prolongation and rests on the premise that the land dominates the sea[1]. In the case of adjacent States on a concave coastline – as in the *North Sea Continental Shelf* cases – there is a need to avoid a cut-off effect which would result from a rigid application of the method of equidistance. In the circumstances of the present case the cut-off effect would result not from the application of the equidistance method but from its rejection or modification of the kind that would result from the Libyan position as it has appeared to be in the course of the negotiations.

269. In geological terms there is a continuum and thus in legal terms the natural prolongations of the respective territories meet and "overlap". As the Court stated in the *North Sea* cases[2]: "The continental shelf area off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore, only be delimited by means of a median line; . . .". In its findings the Court formulated "the principles and rules of international law" applicable to the delimitation of the areas of continental

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[1] See the Separate Opinion of Judge Jiménez de Aréchaga, *Tunisia-Libya Continental Shelf* case, *I.C.J. Reports 1982*, p. 118, paras. 65–66.

[2] *I.C.J. Reports 1969*, p. 36, para. 57.

shelf concerned. The second of these "principles and rules" was as follows:[1]

> "if . . . the delimitation leaves to the Parties areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally . . ."

4. The Customary Law Provenance of the Equidistance Method

270. There is no indication whatsoever in the practice of States that island States should suffer an artificial reduction of continental shelf entitlement. There has been no suggestion that island States are geographically disadvantaged and this must be equally true of island States in semi-enclosed seas and of island States in or abutting upon the oceans. Any tendency to the artificial reduction of the shelf entitlement of island States would have serious repercussions.

271. In positive terms, non-island neighbours of island States have recognised the normal entitlement of their island State neighbours. In an earlier Chapter[2], the following bilateral delimitations were recorded: Bahrain–Iran; Cuba–Mexico; India–Maldives; Cuba–United States; Colombia–Dominican Republic; Colombia–Haiti; Dominican Republic–Venezuela; U.K.–Venezuela; Bahrain–Saudi Arabia; Australia–Indonesia; Indonesia–Singapore and India–Sri Lanka. In addition other bilateral delimitation agreements[3] involved an equal division of seabed areas dividing mainlands and major island dependencies opposite mainlands *viz.*: Norway–United Kingdom (Shetland Islands); India (Nicobar Islands)–Indonesia (Sumatra); United States (Puerto Rico)–Venezuela; India (Nicobar Islands)–Thailand; Denmark (Faroes)–Norway and Australia–France (New Caledonia). These two sets of delimitations involve twenty-one different States: the total of the delimitations, taking into consideration the inclusion of States from a variety of regions, represents a substantial and significant proportion of the practice relating to existing delimitations which involve island States and major island dependencies.

5. The Principal Considerations Justifying Malta's Delimitation

272. It is useful if certain principal considerations are set forth as a series of propositions. These propositions are intended to link the legal principles concerning delimitation of the continental shelf to general considerations of law and good policy.

(*a*) Island States enjoy the same complement of legally appurtenant rights over the continental shelf as do other coastal States.

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[1] *Ibid.*, p. 53, para. 101.

[2] See above, paras. 185 and 187.

[3] See above, para. 191.

(*b*) In the case of opposite States abutting on the same continental shelf, the established normal method of equitable delimitation is that of equidistance.

(*c*) The geography of the Malta–Libya relationship is simple and there is no legal basis for "abatement" of the normal effect of coastal features.

(*d*) The dominant geographical circumstances consist of the position of Malta at a considerable distance from the Libyan coast, and the absence of any intervening islands.

(*e*) Virtually every relevant instance of State practice affirms the equitable character of the method of equidistance in comparable geographical situations.

(*f*) International tribunals should avoid any disturbance of generally accepted principles on which the stability of existing delimitations depends.

(*g*) The governing conception both in the context of continental shelf and the exclusive economic zone is the relation of coastal geography and the 200-mile criterion of distance: and the logical consequence is that, in an "opposite" States situation of less than 400 miles, each State receives a normal complement of appurtenant rights, subject only to the equidistance division *vis-à-vis* the "opposite" coastline.

(*h*) Recent developments in the law of the sea give added importance to islands and there is no basis for any suggestion that an island State should suffer any discrimination in the law.

(*i*) The normal entitlement of island States to shelf rights and exclusive economic zones has received the general approbation of the international community; and the use of the equidistance method between opposite States is more widely recognised than (for example) was the system of straight baselines at the time (1951) when the legality of that system was accepted by the Court in the *Anglo–Norwegian Fisheries* case[1].

(*j*) The appropriateness of the equidistance method is indicated by the practice of coastal States of the Mediterranean.

(*k*) The conduct of the Parties is a relevant circumstance in determining what is the equitable solution: Malta's position has always been consistent, and the first Libyan action incompatible with the *status quo* constituted by Malta's legislation of July 1966 took place in September 1974.

(*l*) The median line established by Malta in her legislation of 1966 is justified by equitable principles and other relevant considerations.

(*m*) The relevant equitable considerations include the absence of energy resources on the mainland of Malta, the requirements of Malta as an island developing country, the range of established fishing activity, and the element of national security in maintaining control of adjacent submarine areas, a consideration the importance of which is enhanced by Malta's status of neutrality.

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[1] *I.C.J. Reports 1951*, p. 116 and pp. 138, 139.

(*n*) Malta's line conspicuously lacks any element of inequity and Libya receives a generous part of the shelf areas dividing the two States by virtue of a combination of the equidistance method and the considerable longitudinal extension of the Libyan coastline.

(*o*) Equidistance is the only means of delimitation which, in the present geographical situation, produces an outcome compatible with the fundamental principle of non-encroachment in the law of the continental shelf.

(*p*) It is widely recognised that islands belonging to a State and lying in the vicinity of its coasts are ordinarily given full weight for delimitation purposes. It is obvious that the island State is an *a fortiori* case.

(*q*) Professor Sörensen has observed[1] that "it must be kept in mind that the legal concept of the continental shelf owes its origin to the generally recognised need of giving the coastal State an exclusive right to exploitation", and Judge Sir Robert Jennings[2], as he now is, has pointed out that "the notion of exploitation itself is qualified by the notion of appurtenance" and, in consequence, "the exploitation meant in this context is that exploitation which is 'contingent upon cooperation and protection from the shore'." This consideration was set out in the Truman Proclamation of 1945 and forms a major *raison d'être* of the legal conception of the continental shelf and of the exclusive economic zone. The shelf areas south of Malta and bounded by the median line clearly conform to this conception in practical terms, and Malta is anxious to obtain the full benefit of the petroleum resources of the appurtenant shelf areas.

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[1] Carnegie Endowment, *International Conciliation*, No. 520, November 1958, p. 195 and p. 228.

[2] *Recueil des Cours de l'Académie de Droit International de La Haye*, Vol. 121 (1967, II), p. 323 and p. 394.

SUBMISSIONS

SUBMISSIONS

273. Having regard to the considerations set out above,
May it please the Court to adjudge and declare that

(i) the principles and rules of international law applicable to the delimitation of the areas of the continental shelf which appertain to Malta and Libya are that the delimitation shall be effected on the basis of international law in order to achieve an equitable solution;

(ii) in practice the above principles and rules are applied by means of a median line every point of which is equidistant from the nearest points on the baselines of Malta, and the low-water mark of the coast of Libya.

VOLUME II

ANNEXES TO THE MEMORIAL OF MALTA

Annex 1

THE CONTINENTAL SHELF ACT, 1966

An Act to make provision as to the exploration and exploitation of the continental shelf and for matters connected with those purposes.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the House of Representatives of Malta, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Continental Shelf Act, 1966.

2. In this Act, unless the context otherwise requires—

"the continental shelf" means the sea bed and subsoil of the submarine areas adjacent to the coast of Malta but outside territorial waters, to a depth of two hundred metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; so however that where in relation to States of which the coast is opposite that of Malta it is necessary to determine the boundaries of the respective continental shelves, the boundary of the continental shelf shall be that determined by agreement between Malta and such other State or States or, in the absence of agreement, the median line, namely a line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial waters of Malta and of such other State or States is measured;

"Malta" has the same meaning as is assigned to it by section 126 of the Constitution of Malta;

"natural resources" means the mineral and other non-living resources of the sea bed and subsoil as well as the living organisms belonging to sedentary species.

3. (1) Any rights exercisable by Malta with respect to the continental shelf and its natural resources are by this Act vested in the Government of Malta.

(2) In relation to any petroleum with respect to which the rights mentioned in subsection (1) of this section are exerciseable subsection (2) of section 3 (which prohibits any person from searching or boring for or getting petroleum without a licence), section 4 (which relates to the granting of licences to search and bore for, and get, petroleum) and section 5 (which relates to the making of regulations with respect to the exploration, prospecting and mining for petroleum) of the Petroleum (Production) Act, 1958, shall apply as they apply in relation to petroleum in Malta.

(3) The Prime Minister may from time to time by order published in the

Government Gazette designate any area as an area within which the rights mentioned in subsection (1) of this section are exercisable, and any area so designated is in this Act referred to as a designated area.

(4) In this section "petroleum" has the same meaning as in the Petroleum (Production) Act, 1958.

4. (1) The Prime Minister may for the purpose of protecting any installation or other device in a designated area by order published in the Government Gazette prohibit ships, subject to any exceptions provided by the order, from entering without his consent such part of that area as may be specified in the order.

(2) If any ship enters any part of a designated area in contravention of an order under this section its owner or master shall be liable, on summary conviction, to a fine *(multa)* not exceeding one thousand pounds or to imprisonment for a term not exceeding three months, or to both, unless he proves that the prohibition imposed by the order was not, and would not on reasonable inquiry have become, known to the master.

5. Any order under this Act may be varied or revoked by a subsequent order.

6. (1) Any act or omission which—

(a) takes place on, under or above an installation or other device in a designated area or any waters within five hundred metres of such an installation or device, and

(b) would, if taking place in any part of Malta, constitute an offence under the law in force in Malta,

shall be treated for the purposes of that law and of any other law in force in Malta as taking place in the island of Malta.

(2) For the purposes of section 743 of the Code of Organisation and Civil Procedure (which relates to jurisdiction) any installation or device in a designated area and any waters within five hundred metres of such an installation or device shall be treated as if they were situated in the island of Malta.

7. (1) If any oil or any mixture containing not less than one hundred parts of any oil in a million parts of the mixture is discharged or escapes into any part of the sea—

(a) from a pipe-line, or

(b) as a result of any operations for the exploration of the sea bed and subsoil or the exploitation of their natural resources in a designated area,

the owner of the pipe-line or, as the case may be, the person carrying on the operations shall be guilty of an offence unless he proves, in the case of a discharge from a place in his occupation, that it was due to the act of a person who was there without his permission (express or implied) or, in the case of an escape, that he took all reasonable care to prevent it and that as soon as practicable after it was discovered all reasonable steps were taken for stopping or reducing it.

(2) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine *(multa)* not exceeding one thousand pounds.

8. (1) No person shall lay or maintain any submarine cable or pipe-line under the high seas in a designated area without a licence in that behalf granted by the Prime Minister or in contravention of any requirement or condition contained in any such licence as to the route of any such cable or pipe-line or as to any other matter intended to ensure non-interference with the exploration or exploitation of the continental shelf or its natural resources.

(2) Any person who contravenes any of the provisions of this section shall be liable, on summary conviction, to a fine *(multa)* not exceeding fifty pounds for each day during which the offence continues.

9. (1) Where an offence under this Act (including an offence under another Act as applied by this Act and anything that is an offence by virtue of subsection (1) of section 6 of this Act) is committed by an association of persons, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such association or was purporting to act in any such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(2) A member of the Police Force shall on any installation or device in a designated area have all the powers, protection and privileges which he has in Malta.

10. The enactment specified in the First Column of the Schedule hereto shall have effect subject to the amendments specified in the Second Column of that Schedule.

SCHEDULE

Section 10

First Column *Enactment Amended*	Second Column *Extent of Amendments*
Petroleum (Production) Act, 1958	In section 2— *(a)* the definition of "the continental shelf" shall be deleted; *(b)* in the definition of "Malta" for the words "the land underlying territorial waters and the continental shelf" there shall be substituted the words "and the land underlying territorial waters".

Annex 2

NOTICE INVITING APPLICATIONS FOR PRODUCTION LICENCES

PETROLEUM (PRODUCTION) ACT, 1958

CONTINENTAL SHELF ACT, 1966

Petroleum (Production) Regulations, 1969

Notice for the Purposes of Regulation 4

For the purposes of regulation 4 of the Petroleum (Production) Regulations, 1969, the Prime Minister hereby notifies that he is prepared to receive between 10.00 a.m. on May 2nd 1973 and 1.00 p.m. on August 2nd 1973 applications in accordance with the said Regulations for Production Licences in respect of the area offshore South of Malta, consisting of sixteen blocks to which the numbers specified in the Schedule to this Notice have been assigned, described in the said Schedule and shown on a map deposited at the Oil Division, Ministry of Development, Merchants Street, Valletta, Malta. The Map may be inspected on request between the hours of 9.30 a.m. and 12.30 p.m. except on Saturdays, Sundays and Public Holidays. In considering any application the Prime Minister will not take into account the day on which it was received.

Applications can be submitted for any number of blocks. To assist the Prime Minister in considering the applications, applicants are, however, invited to indicate the degree of preference which they attach to each block to which their application relates.

Following is a summary of the basic considerations which the Prime Minister has decided to require in respect of licences granted in response to applications:

(i) An annual rental:

(a) on signature calculated at the rate of four Malta pounds (£M4) per square kilometre; and

(b) upon each anniversary of the date of commencement of the licence and during the continuance thereof in respect of the periods herein undermentioned calculated per square kilometre of the area retained as set out hereunder:

Years	*Rate*
2 to 3	£M4 per sq. kilometre
4 to 6	£M8 per sq. kilometre
7 to 10	£M16 per sq. kilometre
11 to 13	£M32 per sq. kilometre
14 to 16	£M64 per sq. kilometre
17 to 19	£M96 per sq. kilometre
20 to 22	£M128 per sq. kilometre
23 to 25	£M160 per sq. kilometre
26 to 30	£M192 per sq. kilometre
After 30 years and up to 30 years after the date on which the option under clause 6 of the Second Schedule of the Petroleum (Production) Regulations, 1969, was exercised.	£M200 per sq. kilometre.

(ii) A minimum royalty equal to 12½ per cent of the posted prices of crude oil produced and saved in the concession area.

Applicants are expected to indicate:

(a) the minimum amounts they are willing and able to spend on prospecting, exploration, drilling or development of the petroleum resources in their concession area during the ten years referred to in clause 3 of the Second Schedule of the Petroleum (Production) Regulations, 1969;

(b) the number and depth or the aggregate depth of wells to be drilled during the exploration period;

(c) the time within which they are willing and able to commence drilling a first test well, such period not to exceed twenty-four (24) months from the date of the grant of the licence;

(d) the amount of signature and/or production bonuses to be paid to the Government of Malta; and

(e) special financial formulae providing escalating scales of carried interest applicable at various stages of production.

Applications will only be considered if applicants purchase the data from a recent seismic survey conducted on the area on behalf of the Government of Malta.

The attention of applicants is particularly drawn to the following facts:

(a) For the purpose of calculating royalties and income tax, values will be assessed according to applicable "Posted Prices";

(b) Royalties will be expensed but not be regarded as payment on account of tax;

(c) For income tax purposes, a company to which more than one licence is granted shall be deemed to constitute as many persons subject to tax as the number of licences it enjoys

SCHEDULE

Open for Application for Production Licences

BLOCK 1

A B C D

A:	35° 23'6 N 14° 50'5 E
B:	35° 23'6 N 15° 18'1 E
C:	35° 06'7 N 15° 18'1 E
D:	35° 06'7 N 14° 50'5 E

Block 2

D G F E

D:	35° 06' 7 N 14° 50' 5 E
G:	35° 06' 7 N 15° 11' 8 E
F:	34° 43' 4 N 15° 11' 8 E
E:	34° 43' 4 N 14° 50' 5 E

Block 3

G H I J

G:	35° 06' 7 N 15° 11' 8 E
H:	35° 06' 7 N 15° 33' 5 E
I:	34° 55' N 15° 33' 5 E
J:	34° 55' N 15° 11' 8 E

Block 4

J I K F

J:	34° 55' N 15° 11' 8 E
I:	34° 55' N 15° 33' 5 E
K:	34° 43' 4 N 15° 33' 5 E
F:	34° 43' 4 N 15° 11' 8 E

Block 5

H M L K

H:	35° 06' 7 N 15° 33' 5 E
M:	35° 06' 7 N 15° 54' E
L:	34° 43' 4 N 15° 54' E
K:	34° 43' 4 N 15° 33' 5 E

Block 6

N O P L

N:	35° 02′ 1 N 15° 54′ E
O:	35° 02′ 1 N 16° 26′ E
P:	34° 43′ 4 N 16° 26′ E
L:	34° 43′ 4 N 15° 54′ E

Block 7

Q T S R

Q:	34° 43′ 4 N 14° 07′ 5 E
T:	34° 43′ 4 N 14° 27′ 1 E
S:	34° 27′ 2 N 14° 27′ 1 E
R:	34° 27′ 2 N 14° 07′ 5 E

Block 8

T U V S

T:	34° 43′ 4 N 14° 27′ 1 E
U:	34° 43′ 4 N 15° 03′ 3 E
V:	34° 27′ 2 N 15° 03′ 3 E
S:	34° 27′ 2 N 14° 27′ 1 E

Block 9

U X W V

U:	34° 43′ 4 N 15° 03′ 3 E
X:	34° 43′ 4 N 15° 23′ 3 E
W:	34° 27′ 2 N 15° 23′ 3 E
V:	34° 27′ 2 N 15° 03′ 3 E

Block 10

X Y Z W

X:	34° 43' 4 N	15° 23' 3 E
Y:	34° 43' 4 N	15° 42' 7 E
Z:	34° 27' 2 N	15° 42' 7 E
W:	34° 27' 2 N	15° 23' 3 E

Block 11

Y AA AB Z

Y:	34° 43' 4 N	15° 42' 7 E
AA:	34° 43' 4 N	16° 07' 4 E
AB:	34° 27' 2 N	15° 59' 5 E
Z:	34° 27' 2 N	15° 42' 7 E

Block 12

R S AD AC

R:	34° 27' 2 N	14° 07' 5 E
S:	34° 27' 2 N	14° 27' 1 E
AD:	34° 15' 5 N	14° 27' 1 E
AC:	34° 17' 1 N	14° 07' 5 E

Block 13

S AF AE AD

S:	34° 27' 2 N	14° 27' 1 E
AF:	34° 27' 2 N	14° 56' 1 E
AE:	34° 13' 2 N	14° 56' 1 E
AD:	34° 15' 5 N	14° 27' 1 E

Block 14

AF AG AH AE

AF:	34° 27′ 2 N 14° 56′ 1 E
AG:	34° 27′ 2 N 15° 13′ E
AH:	34° 12′ 2 N 15° 13′ E
AE:	34° 13′ 2 N 14° 56′ 1 E

Block 15

AG AJ AI AH

AG:	34° 27′ 2 N 15° 13′ E
AJ:	34° 27′ 2 N 15° 30′ E
AI:	34° 12′ N 15° 30′ E
AH:	34° 12′ 2 N 15° 13′ E

Block 16

AJ AB AK AI

AJ:	34° 27′ 2 N 15° 30′ E
AB:	34° 27′ 2 N 15° 59′ 5 E
AK:	34° 14′ 2 N 15° 52′ 9 E
AI:	34° 12′ N 15° 30′ E

The areas of Blocks 12, 13, 14, 15 and 16 are subject to alterations in the light of any agreement on the Median line between Malta and the Libyan Arab Republic.

Annex 3

DECLARATION BY THE GOVERNMENT OF THE REPUBLIC OF MALTA CONCERNING THE NEUTRALITY OF MALTA

The Government of the Republic of Malta

Faithful to the decision of the People of the Republic of Malta to eliminate all foreign military bases after March 31, 1979, and to contribute to peace and stability in the Mediterranean region by changing their country's unnatural role of a fortress into a centre of peace and a bridge of friendship between the Peoples of Europe and of North Africa;

Conscious of the special contribution the Republic of Malta can make towards that end by assuming a status of neutrality strictly founded on the principles of non-alignment;

Aware of the support which neighbouring European and Arab Mediterranean States will give to Malta's new role and to such a status of neutrality:

1. Solemnly declares that the Republic of Malta is a neutral State actively pursuing peace, security and social progress among all nations by adhering to a policy of non-alignment and refusing to participate in any military alliance;

2. Affirms that such a status will, in particular, imply that:

(a) no foreign military base will be permitted on Maltese territory;

(b) no military facilities in Malta will be allowed to be used by any foreign forces except at the request of the Government of Malta, and only in the following cases:

(i) in the exercise of the inherent right of self-defence in the event of any armed violation of the area over which the Republic of Malta has sovereignty, or in pursuance of measures or actions decided by the Security Council of the United Nations; or

(ii) whenever there exists a threat to the sovereignty, independence, neutrality, unity or territorial integrity of the Republic of Malta;

but the Government of Malta will immediately inform the nieghbouring Mediterranean States which have made like Declarations welcoming the present Declaration and giving appropriate undertakings of the steps taken under this paragraph;

(c) except as aforesaid, no other facilities in Malta will be allowed to be used in such manner or extent as will amount to the presence in Malta of a concentration of foreign forces;

(d) except as aforesaid, no foreign military personnel will be allowed on Maltese territory, other than military personnel performing, or assisting in the performance of, civil works or activities, and other than a reasonable number of military technical personnel assisting in the defence of the Republic of Malta;

(e) the shipyards of the Republic of Malta will be used for civil commercial purposes, but may also be used, within reasonable limits of time and quantity, for the repair of military vessels which have been put in a state of non-combat or for the construction of vessels; and in accordance with the principles of non-alignment the said shipyards will be denied to the military vessels of the two superpowers.

3. Expresses its hope that, with the concurrence of the Government of the Republic of Malta, neighbouring Mediterranean States will make like Declarations welcoming the present Declaration and giving such undertakings as may be appropriate. The Government of the Republic of Malta will inform each of such States of the Declarations made by other States.

Annex 4

Draft Delimitation Agreement Proposed by Malta on 12-13 July 1972

AGREEMENT BETWEEN THE GOVERNMENT OF MALTA AND THE GOVERNMENT OF THE LIBYAN ARAB REPUBLIC RELATING TO THE DELIMITATION OF THE CONTINENTAL SHELF BETWEEN THE TWO COUNTRIES

The Government of Malta and the Government of the Libyan Arab Republic;

Desiring to establish the boundary between the respective parts of the Continental Shelf on the basis of a line every point of which is equidistant from the nearest points of the baselines from which the territorial sea of each country is at present measured:

Have agreed as follows:

Article 1

(1) The dividing line between the part of the Continental Shelf which appertains to Malta and that part which appertains to the Libyan Arab Republic shall be arcs of Great Circles between the following points, in the sequence given below:

1.	34° 27′ 0	N
	13° 27′ 4	E
2.	34° 20′ 3	N
	13° 54′ 3	E
3.	34° 17′ 2	N
	14° 06′ 3	E
4.	34° 16′ 2	N
	14° 16′ 2	E
5.	34° 14′ 0	N
	14° 39′ 8	E
6.	34° 12′ 3	N
	15° 02′ 5	E
7.	34° 11′ 0	N
	15° 25′ 0	E
8.	34° 12′ 8	N
	15° 43′ 0	E
9.	34° 14′ 8	N
	16° 00′ 0	E
10.	34° 19′ 3	N
	16° 37′ 5	E
11.	34° 23′ 5	N
	17° 16′ 0	E
12.	34° 27′ 2	N
	17° 46′ 2	E
13.	34° 48′ 0	N
	18° 04′ 6	E

The positions of the points in this Article are defined by latitude and longitude on the basis of the Greenwich Meridian.

(2) The dividing line has been drawn on the chart annexed to this Agreement.

Article 2

Subsequent changes in the conformation or charting of the coastline or baselines of Malta or the Libyan Arab Republic due to natural or other causes shall not alter the dividing line.

Article 3

If at any time it is determined that a single petroleum field extends across the dividing line then the Contracting Parties shall consult with a view to reaching agreement upon a plan for the exploitation of the field in question.

Article 4

Should any dispute arise concerning the position of any installation or other device in relation to the dividing line, the Contracting Parties shall in consultation determine on which side of the dividing line the installation or other device is situated.

Article 5

The present Agreement shall enter into force upon signature.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

Done in duplicate at . . . .
the . . . . in the English and Arabic languages, both texts being equally authoritative.

. . . .	. . . .
For the Government of Malta.	For the Government of the Libyan Arab Republic.

Annex 5

DRAFT DELIMITATION AGREEMENT PROPOSED BY LIBYA ON 23 APRIL 1973
[English Text]

[See Memorial of the Libyan Arab Jamahiriya,
Documentary Annex 39, supra*]*

Annex 6

Letter Sent by Libya to Texaco Malta Inc.

The Government of the Libyan Arab Republic has learnt that your Company is carrying out exploration activities aiming at the extraction of oil in off-shore areas in the Mediterranean, the locations of which are described by the co-ordinates shown in the attached data. The said areas constitute a continental shelf upon which the Libyan Arab Republic maintains full sovereignty.

Accordingly, the Government of the Libyan Arab Republic hereby demands a firm assurance from your Company confirming that no such exploration or drilling activities are being carried out within the said areas. Your performance of such activities without obtaining a prior permit or authority from the Libyan Arab Republic shall be considered an infringement upon its rights, thus justifying the adoption of any measures deemed necessary to safeguard our legitimate rights.

(Signed) M. M. Zregh,
Undersecretary
Ministry Of Petroleum.

Encl: Detailed data on the locations referred to in this letter.

TEXACO

(1) Area comprised between points:

A	34° 54′ Latitude 14° 49′ Longitude
B	34° 54′ Latitude 15° 11′ Longitude
C	34° 43′ Latitude 15° 11′ Longitude
D	34° 43′ Latitude 14° 49′ Longitude

(2) Area comprised between points:

A	34° 54′ Latitude 15° 32′ Longitude
B	34° 43′ Latitude 15° 32′ Longitude
C	34° 43′ Latitude 15° 11′ Longitude
D	34° 54′ Latitude 15° 11′ Longitude

(3) Area comprised between points:

A	34° 43′ Latitude 15° 03′ Longitude
B	34° 43′ Latitude 15° 22′ Longitude
C	34° 26′ Latitude 15° 22′ Longitude
D	34° 26′ Latitude 15° 03′ Longitude

Annex 7

LETTER SENT BY LIBYA TO JOC OIL LTD.

The Government of the Libyan Arab Republic has learnt that your Company is carrying out exploration activities aiming at the extraction of oil in off-shore areas in the Mediterranean, the locations of which are described by the co-ordinates shown in the attached data. The said areas constitute a continental shelf upon which the Libyan Arab Republic maintains full sovereignty.

Accordingly, the Government of the Libyan Arab Republic hereby demands a firm assurance from your Company confirming that no such exploration or drilling activities are being carried out within the said areas. Your performance of such activities without obtaining a prior permit or authority from the Libyan Arab Republic shall be considered an infringement upon its rights, thus justifying the adoption of any measures deemed necessary to safeguard our legitimate rights.

(Signed) M. M. ZREGH,
Undersecretary,
Ministry Of Petroleum.

Encl: Detailed data on the locations referred to in this letter.

JOC OIL EXPLORATION CO. INC.

(1) Area comprised between points:

A	34° 43′ Latitude 15° 22′ Longitude
B	34° 43′ Latitude 15° 41′ Longitude
C	34° 26′ Latitude 15° 22′ Longitude
D	34° 26′ Latitude 15° 41′ Longitude

(2) Area comprised between points:

A	34° 43′ Latitude 15° 41′ Longitude
B	34° 43′ Latitude 16° 06′ Longitude
C	34° 26′ Latitude 15° 58′ Longitude
D	34° 26′ Latitude 15° 41′ Longitude

(3) Area comprised between points:

A	34° 26′ Latitude 14° 54′ Longitude
B	34° 26′ Latitude 15° 12′ Longitude
C	34° 11′ Latitude 15° 12′ Longitude
D	34° 12′ Latitude 14° 54′ Longitude

Annex 8

Letter Sent by Libya to SNPA

The Government of the Libyan Arab Republic has learnt that your Company is carrying out exploration activities aiming at the extraction of oil in off-shore areas in the Mediterranean, the locations of which are described by the co-ordinates shown in the attached data. The said areas constitute a continental shelf upon which the Libyan Arab Republic maintains full sovereignty.

Accordingly, the Government of the Libyan Arab Republic hereby demands a firm assurance from your Company confirming that no such exploration or drilling activities are being carried out within the said areas. Your performance of such activities without obtaining a prior permit or authority from the Libyan Arab Republic shall be considered an infringement upon its rights, thus justifying the adoption of any measures deemed necessary to safeguard our legitimate rights.

(Signed) M. M. Zregh,
Undersecretary,
Ministry Of Petroleum.

Encl: Detailed data on the locations referred to in this letter.

AQUITAINE

Area comprised between points:

A	34° 26′ Latitude 15° 28′ Longitude
B	34° 26′ Latitude 15° 58′ Longitude
C	34° 13′ Latitude 15° 51′ Longitude
D	34° 11′ Latitude 15° 28′ Longitude

Annex 9

LETTER SENT BY MALTA TO CFP

17 June 1975.

The Government of the Republic of Malta is informed that your Company is carrying out oil exploration activities in the offshore area in the Mediterranean north of a line defined by the following co-ordinates

(a)	34° 27′ 0 N	13° 27′ 4 E
(b)	34° 20′ 3 N	13° 54′ 3 E
(c)	34° 17′ 2 N	14° 06′ 3 E
(d)	34° 16′ 2 N	14° 16′ 2 E
(e)	34° 14′ 0 N	14° 39′ 8 E
(f)	34° 12′ 3 N	15° 02′ 5 E
(g)	34° 11′ 0 N	15° 25′ 0 E
(h)	34° 12′ 8 N	15° 43′ 0 E
(i)	34° 14′ 8 N	16° 00′ 0 E
(j)	34° 19′ 3 N	16° 37′ 5 E
(k)	34° 23′ 5 N	17° 16′ 0 E

This area constitutes a continental shelf upon which the Republic of Malta maintains full sovereign rights and any exploration or drilling activities therein without a licence issued to you by the Government of the Republic of Malta, constitutes an infringement of Malta's sovereignty, justifying the adoption of measures necessary to safeguard the legitimate rights of the Republic of Malta.

The Government of the Republic of Malta hereby requests a categoric assurance from your Company that no such exploration or drilling activities are being or will be carried out in any part of the above area.

(Signed) M. ABELA,
Chairman Oil Committee.

Chairman,
Compagnie Française de Pétroles,
49, quai André-Citroën,
75739 Paris.

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Annex 10

LETTER SENT BY MALTA TO EXXON

23 June 1975.

The Government of the Republic of Malta is informed that your company is carrying out oil exploration activities in the off-shore area in the Mediterranean north of a line defined by the following co-ordinates:

	Degs.	*Mins.*	*Secs.*	
A	34	27	0	N
	13	27	4	E
B	34	20	3	N
	13	54	3	E
C	34	17	2	N
	14	06	3	E
D	34	16	2	N
	14	16	2	E
E	34	14	0	N
	14	39	8	E
F	34	12	3	N
	15	02	5	E
G	34	11	0	N
	15	25	0	E
H	34	12	8	N
	15	43	0	E
I	34	14	8	N
	16	00	0	E
J	34	19	3	N
	16	37	5	E
K	34	23	5	N
	17	16	0	E

This area constitutes a continental shelf upon which the Republic of Malta maintains full sovereign rights and any exploration or drilling activities therein without a licence issued to you by the Government of the Republic of Malta, constitutes an infringement of Malta's sovereignty, justifying the adoption of measures necessary to safeguard the legitimate rights of the Republic of Malta.

The Government of the Republic of Malta hereby requests a categoric assurance from your company that no such exploration or drilling activities are being or will be carried out in any part of the above area.

This letter replaces the one dated 17 June 1975, which contained a technical error.

(Signed) C. V. VELLA,
Chargé d'Affaires, a.i.

Annex 11

Draft Special Agreement Presented by Malta to Libya on 3 January 1976

SPECIAL AGREEMENT FOR THE SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE OF A DIFFERENCE BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALTA AND THE GOVERNMENT OF THE LIBYAN ARAB REPUBLIC REGARDING THE DELIMITATION OF THE CONTINENTAL SHELF IN THE MEDITERRANEAN SEA

The Government of the Republic of Malta and the Government of the Libyan Arab Republic;

Considering that the area of the sea-bed and subsoil in the Mediterranean Sea between Malta and Libya forms a continental shelf over which the two States exercise sovereign rights for the purpose of exploring it and exploiting its natural resources; and that it is desirable to lay down the exact continental shelf boundary between them;

Considering that in the course of the negotiations that have taken place between the Parties some differences of opinion have become apparent in regard to the rules and principles to be applied in laying down such a boundary;

Considering the close and friendly relations existing between the two Nations and their Governments;

Intending to settle the differences which have thus arisen in the spirit of the friendly and good neighbourly relations existing between them;

Bearing in mind that for the purpose of settling differences between States which cannot be solved by means of diplomatic negotiations, judicial settlement is best in harmony with the basic principles of international law and the Charter of the United Nations to which the Parties firmly adhere;

Have decided to submit the differences that have arisen between them to the International Court of Justice, and for this purpose have agreed as follows:

Article 1

(1) The Court is requested—

(a) to decide what, according to the applicable principles and rules of international law, is the dividing line separating, as between the Parties, the continental shelf areas lying between Malta and Libya;

(b) to delimit the said dividing line and cause such part of it as stretches in the west-east direction from the [14th to the 18th] degrees of longitude east of Greenwich, to be marked out on a chart or charts of scale not less than [1:1,000,000 at lat. 39° N], to be attached to and form an integral part of the final decision of the Court.

(2) The choice of the [14th to the 18th] degrees of longitude east of Greenwich is without prejudice to the rights of the Parties beyond those points in conformity with the decision of the Court.

Article 2

(1) The proceedings shall consist of written pleadings and oral hearings.

(2) Without prejudice to any question of the burden of proof, the written pleadings shall consist of the following documents:

(a) *Memorials* to be submitted simultaneously to the Court by each Party and exchanged with one another [four months] after the date of the communication of the present Agreement to the Registrar of the Court;

(b) *Replies* to be similarly submitted and exchanged [three months] after the date of the submission of the Memorials;

(c) If either Party so requests and the Court so decides after consultation with the other Party, *Rejoinders* to be submitted and exchanged on such date as the Court may direct.

(3) The question of the order of speaking at the oral hearing shall be decided by mutual agreement between the Parties, or, failing such agreement, by the Court after consultation with the Parties, or, if necessary, after hearing them. Whatever the order of speaking adopted it shall be without prejudice to any question of the burden of proof.

Article 3

Following upon the final decision of the Court, the Governments of the Republic of Malta and of the Libyan Arab Republic shall respectively proclaim the continental shelf boundary between their two countries in conformity with that decision.

Article 4

The present Agreement shall enter into force on the day of its signature and shall be immediately communicated to the Registrar of the Court by the Parties jointly, or failing that by either of them.

Annex 12

DRAFT SPECIAL AGREEMENT PRESENTED BY LIBYA TO MALTA ON 27 JANUARY 1976 (English Text)

SPECIAL AGREEMENT FOR REFERRING THE DIFFERENCES BETWEEN THE LIBYAN ARAB REPUBLIC AND THE REPUBLIC OF MALTA TO THE INTERNATIONAL COURT OF JUSTICE

The Government of the Libyan Arab Republic and the Government of the Republic of Malta have decided to have recourse to the I.C.J. for its decision on the following question:

Article 1. Requested from the Court: to indicate which rules and principles of the international law should be applied for the demarcation of the continental shelf areas and the economic zone areas belonging to each of the Libyan Arab Republic and the Republic of Malta.

Article 2. The Government of the Libyan Arab Republic and the Government of Malta will enter into consultations to establish the dividing line of the continental shelf and the economic zone belonging to each State in accordance with the decision of the Court.

Article 3. (i) The processes should comprise both written and oral pleadings.

(ii) without prejudice to any evidence that may be produced in the course of the written proceedings, the latter shall include:

> *(a) Memoranda* presented by both Parties. Malta shall submit its memorandum to the Court within a year from the date of presentation of this protocol to the Court. The L.A.R. shall in turn submit its memorandum to the Court within a year from the date of the presentation of Maltese memorandum.
>
> *(b) Replies* or answers shall be exchanged in similar sequence within a period of six months from the date of delivery of the memoranda to the Registrar.
>
> *(c) Supplementary Aide-Memoires* shall be presented and exchanged on dates fixed by the Court upon request from one of the Parties or, if the Court so decides, after consulting the other Party.

(iii) The order of speeches during the oral pleadings shall be established by agreement between the two Parties, through the Court, and upon consultation of the two Parties if the hearings so necessitate. However, the agreed order of statements shall not be contravened in the case of evidence, proof or new bases of concepts regarding the dispute decided by International Conferences.

Article 4. Following the final decision of the Court, both Parties shall enter into negotiations to conclude an agreement on the demarcation of the Continental Shelf and the Economic Zone pertaining to each, in accordance with the principles and bases decided by the Court.

Article 5. The said Agreement shall come into force from the date of signature and shall be referred by both Parties to the Registrar of the Court.

For the Government of the Libyan Arab Republic.	For the Government of the Republic of Malta.

Annex 13

RATIFICATION OF SPECIAL AGREEMENT BY MALTA, 28 MAY 1976

[See Special Agreement, p. 14, supra*]*

Annex 14

LETTER FROM THE PRIME MINISTER OF MALTA OF 3 DECEMBER 1976

[Maltese text not reproduced]

(Translation)

You are aware that the most delicate problem we have had to face in the relations between Malta and Libya was the share of the sea-bed in the exploration and exploitation of oil appertaining to each side.

We both spent years racking our brains on how to come to an understanding which would do justice to both Libya and Malta. From the very beginning we agreed on one thing: that we shall not let this problem disrupt the friendship existing between our two peoples.

In January of this year we both agreed to leave the decision on the principles and their application in the hands of the International Court of Justice at The Hague.

On the 23rd May 1976 during your memorable visit to Malta, Minister Ben Amer and Minister Abela signed a special agreement giving official confirmation by both Governments to what you and I had agreed upon in January.

I regret to inform you that up to the present day this agreement has not yet been ratified by the Libyan Arab Republic.

At first this delay was due to Prime Minister Jalloud's mediation mission in Lebanon. When he returned to Tripoli we were informed that there was a backlog of other agreements which were concluded before ours, awaiting ratification.

But now it has come to our knowledge that the Libyan Arab Republic has ratified agreements with other countries which had been signed at a later date than ours.

This lack of ratification is causing us great trouble. The Opposition in Parliament is accusing us that in spite of our close friendly relations we have been unable to agree on such a simple matter. It is also worth remembering that the two countries — Malta and Libya — are bound by a commitment that they will change Malta's economy from one dependent on the foreign military base to one of development based on peaceful relations with our neighbours, by March 1979.

I need to explain to you that if we succeed in finding oil before 1979 we will make a great stride forward in eliminating the need for a military base. For this reason this delay is also weighing on our conscience and I am certain that you will agree with us that there is now no reason why this issue should still stand between us.

If my impression is correct that it is your wish for us to work quietly and without publicity on the lines that Malta had indicated prior to our agreement to go to the International Court, I am ready to interpret your silence following receipt of this letter as implying your approval that Libya, as a friendly gesture towards Malta, will let Malta drill in the area up to the median line that is exactly equidistant between our countries.

Therefore, if by the first day of the new year, we will not receive a reply other than an acknowledgement of our letter, I will assume that this is indeed your wish.

In another letter, or as soon as we meet again, I will give you useful information on what is happening with Germany, France, Italy, Spain and Yugoslavia regarding our aspiration that after March 1979 Malta will be a neutral State.

My colleagues and I send our best regards to you, your colleagues and family and augur prosperity to the Libyan people.

H.E. Col. Muammar Gaddafi,
President of the Arab Republic of Libya.

Annex 15

LETTER FROM THE PRIME MINISTER OF MALTA OF 14 JANUARY 1978

[Maltese text not reproduced]

(Translation)

You are aware of all the trouble we have been through until, finally on the 23rd May 1976 we reached an agreement, signed by Minister Ben Amer on behalf of the Libyan Jamahiriya and Minister Wistin Abela on behalf of the Republic of Malta, to submit the dispute on the division of the sea-bed between Malta and Libya to the International Court of Justice at The Hague.

In December 1976 Major Jalloud promised me in writing that Libyan experts would leave no stone unturned to ensure the ratification of the agreement in the shortest possible time.

In June of last year, when Major Jalloud was in Malta, he promised me that the agreement signed in May 1976 would be presented to the People's Congress for the necessary approval. This was again confirmed to me in Malta by the Secretary of Foreign Affairs, Dr. Ali Treki, last September.

Now that the People's Congress have not only met but have approved all that the Administration has done, there appears to be nothing to prevent the Government of the Libyan Jamahiriya from formally communicating to us ratification as agreed.

I cannot understand what is preventing the friendly Government of the Libyan Jamahiriya from carrying out a mere formality in order that the May 1976 Agreement may come into force. Of one thing I am sure: this is not being done capriciously or through carelessness because I am fully aware how hard both of us have worked to strengthen the friendship and brotherly ties between our two countries. This same bond of friendship makes it encumbent on me to inform you that the non-ratification of the May 1976 Agreement is seriously demolishing all that we have succeeded to build together.

I know, Mr. Secretary General, that you will appreciate that the people of Malta are anxious for exploration work to start, because if oil is found by 1979 our Island would be able to face its future as a neutral country with greater courage. This notwithstanding, unless the Agreement is ratified, I am not only unable to give serious information to Parliament, but I am also being prevented from warding off the great damage that is being inflicted to the good relations that exist between us.

Only our enemies are benefiting from this situation. I am enclosing with this letter a translation of the leading article of the reactionary and pro-West newspaper *Times of Malta* of the 12th January 1978.

For this reason I am confident that you will fully understand this situation and the need for both sides that the May 1976 Agreement be ratified prior to the formal discussions scheduled for the 30th of this month in connection with Malta's status after March 1979.

H.E. Col. Muammar Gaddafi,

Secretary General,
Socialist People's Libyan Arab Jamahiriya.

Annex 16

LETTER FROM THE PRIME MINISTER OF MALTA OF 12 MAY 1978

Like you I still feel the shock of the death by accident of Taha Sharif Ben Amer and Ahmed Abushagur. Sharif Ben Amer we all loved as a brother. He has not had the opportunity to collect from the hands of our President the decoration bestowed upon him by the Republic of Malta — Midalja ghall-Qadi tar-Repubblika. We would feel honoured if you could arrange for his widow, with her young son, to come to Malta and accept the medal on behalf of her late husband.

On May 3-5 of this year His Excellency Mansour M. Badr has come to Malta to make some proposals about two major issues: *(a)* the dividing line of the Continental Shelf between our two countries; and *(b)* the concessionary oil agreement.

On the first issue the Libyan proposal seems to be that Malta should forget all the years of discussion which finally ended with your personal intervention enabling an agreement to be reached between our two governments on the 23 May 1976 to refer the dispute for arbitration by the International Court of Justice. The Libyan proposal puts the clock back at least six years and expects the Government of Malta to start again from scratch.

The second proposal brings to an end the concessionary terms of the oil agreement which you, personally, generously and publicly offered to the people of Malta during one of your visits. It also hints vaguely at the setting up of a joint Maltese/Libyan Committee of Experts which would discuss in what way the Maltese economy might be helped as a substitution in total or in part for the loss of the concession.

On our side the Deputy Prime Minister tried to raise the point — vital to both countries — concerning the urgency for a formal agreement to be publicly made between our two countries to enable Malta to have a guaranteed status of neutrality after March, 1979. Minister Badr was repeatedly told of the urgency of this issue especially now that there are hardly any British Forces left on the Island and we want to make sure to have the ability to resist sudden attacks of the Entebbe type. Much to our surprise His Excellency Mansour M. Badr regretted he had no authority to discuss this issue.

From what I have briefly stated — if you wish my friend Joe Camilleri will give you more details orally — I am sure you will gather how necessary is again your personal intervention to clear up this mess for which I feel certain only the bureaucrats are responsible.

Our country is passing through one of its most dangerous and critical periods. If, with your help, we are able to steer a course which will ultimately enable us to reach the goal of a lasting and stable neutral Malta in a Mediterranean free of domination by the two super powers, your name in history will shine for many generations.

H.E. Muammar El-Ghaddafi,

Secretary General of the Socialist People's Libyan
Arab Jamahiriya,
Tripoli, Libya.

Annex 17

MALTA'S NOTE TO LIBYA OF 21 NOVEMBER 1979

The Ministry of Foreign Affairs of the Republic of Malta presents its compliments to the Popular Office of the Socialist People's Libyan Arab Jamahiriya and has the honour to refer to the long-outstanding question of the delimitation of the continental shelves of the two countries.

The Ministry recalls with satisfaction the understandings reached recently in Tripoli, and later confirmed in Malta, on current and future co-operation between the Jamahiriya and Malta.

The Ministry must, however, again express its regret that no real progress was made on the question of delimitation. Indeed the Ministry cannot but recall with concern the various abortive attempts at reaching an agreeed solution, in particular the fact that the Special Agreement signed, after years of negotiations, in May 1976, has, notwithstanding the promise of an early ratification, remained unratified by the Libyan side until this day.

Even a simple agreement that the experts of the two sides should meet in Malta in the very early days of this month has not been kept. This meeting was intended to pave the way for a last-minute attempt to be made at the highest level not later than mid-November in order that, should an agreement be reached, this could be ratified by the Popular Congresses during this year's session.

There seems to be now little time left for the two sides to reach a final agreement capable of being ratified by the Congresses this year unless both sides were to act quickly and with the necessary determination to reach an agreement in time.

While, therefore, the Maltese Government will honour its latest commitment to send its experts to Tripoli on November 26, it has little confidence that this mission will be successful unless both sides take a more flexible approach.

Thus, as regards the proposal made by the Jamahiriya during the meeting of October 16, 1979, and which is recorded in the agreed minutes of that meeting, it would not be possible for the Maltese Government—for reasons already given verbally—to consider its acceptance, even with modifications, unless the proposal is authorized by the Popular Congresses and could be implemented without the need of a reference back to the Congresses for ratification.

To show its own good will, and in a further effort to reach a working agreement that would give the two sides more time and a better opportunity for a wider and final agreement, the Maltese Government declares its readiness to modify its own proposal put forward at the Tripoli meeting just referred to. The Maltese Government would be prepared to extend from 5 to 15 miles the area on its side of the median line which would be declared to be in dispute, if the Jamahiriya made a similar extension on its side. The two countries could then exploit the remainder of the areas without any further delay.

At the same time, the Government of the Republic of Malta has no option but to confirm that it cannot postpone any further the exploitation of the area of the continental shelf between the two countries which it firmly believes to appertain to the Maltese people. The Maltese Government has commitments which it must honour and drilling must therefore start in the near future in the area north of the line A B shown in the attached map.

The Ministry of Foreign Affairs of the Republic of Malta avails itself of this opportunity to renew to the Popular Office of the Socialist People's Libyan Arab Jamahiriya the assurances of its highest consideration.

Popular Office of the
Socialist People's Libyan
Arab Jamahiriya.

Annex 18

LIBYAN NOTE TO MALTA OF 10 MAY 1980

[See Memorial of the Libyan Arab Jamahiriya,
Documentary Annex 66, supra*]*

Annex 19

MALTA'S NOTE TO LIBYA OF 21 MAY 1980

The Ministry of Foreign Affairs of the Republic of Malta presents its compliments to the Popular Committee of the Socialist People's Libyan Arab Jamahiriya and has the honour to refer to the Note Verbale of May 10, 1980, addressed by the Secretariat of the Socialist People's Libyan Arab Jamahiriya to the Embassy of the Republic of Malta.

The Ministry of Foreign Affairs rejects and refutes as completely unfounded and inadmissible in international law, all claims by the the Socialist People's Libyan Arab Jamahiriya over areas of the continental shelf in respect of which the Republic of Malta has granted exploration and production licences.

All licences granted for that purpose by the Government of the Republic of Malta—none of which, incidentally, was granted recently, since the last licence is dated 19 November 1974—were granted in areas which unquestionably fall within the continental shelf which appertains exclusively to the Republic of Malta.

Indeed, it was the Republic of Malta that was aggrieved by the grant of licences made by the Socialist People's Libyan Arab Jamahiriya, against all rules and principles of international law, in respect of areas falling within the exclusive sovereignty of the Republic of Malta. So much so that the Government of Malta protested strongly against this illegal most unfriendly act by letters dated 17 June 1975 and 23 June 1975.

The Ministry of Foreign Affairs of the Republic of Malta therefore, while it denounces as completely unfounded in law and in fact all claims and allegations contained in the Libyan Note Verbale under reply, calls on the Socialist People's Libyan Arab Jamahiriya to refrain from any further acts of unfriendliness against the Republic of Malta and places responsibility for any adverse effect on the friendly relations between the two countries squarely on the Socialist People's Libyan Arab Jamahiriya.

Popular Committee of
the Socialist People's
Libyan Arab Jamahiriya,
Popular Office,
Sliema.

Annex 20

Agreement between Denmark and Norway Concerning the Faroe Islands

[Not reproduced]

Annex 21

Claims to a 200-Mile Exclusive Economic Zone as Listed by the United States Department of State

[Not reproduced]

Annex 22

Agreement between Bahrain and Iran, 17 June 1971

[Not reproduced]

Annex 23

Agreement between Cuba and Mexico, 26 July 1976

[Not reproduced]

Annex 24

AGREEMENT BETWEEN INDIA AND MALDIVES, 28 DECEMBER 1976

[Not reproduced]

Annex 25

AGREEMENT BETWEEN CUBA AND THE UNITED STATES OF AMERICA, 16 DECEMBER 1977

[Not reproduced]

Annex 26

AGREEMENT BETWEEN COLOMBIA AND THE DOMINICAN REPUBLIC, 13 JANUARY 1978

[Not reproduced]

Annex 27

AGREEMENT BETWEEN COLOMBIA AND HAITI, 17 FEBRUARY 1978

[Not reproduced]

Annex 28

AGREEMENT BETWEEN THE DOMINICAN REPUBLIC AND VENEZUELA, 3 MARCH 1979

[Not reproduced]

Annex 29

AGREEMENT BETWEEN THE UNITED KINGDOM AND VENEZUELA CONCERNING TRINIDAD, 26 FEBRUARY 1942

[Not reproduced]

Annex 30

AGREEMENT BETWEEN BAHRAIN AND SAUDI ARABIA, 22 FEBRUARY 1958

[Not reproduced]

Annex 31

AGREEMENTS BETWEEN AUSTRALIA AND INDONESIA

(1) AGREEMENT OF 18 MAY 1971

(2) AGREEMENT OF 9 OCTOBER 1972
SUPPLEMENTARY TO THE AGREEMENT OF 18 MAY 1971

(3) AGREEMENT CONCERNING CERTAIN BOUNDARIES BETWEEN
INDONESIA AND PAPUA NEW GUINEA, 12 FEBRUARY 1973

[Not reproduced]

Annex 32

AGREEMENT BETWEEN INDONESIA AND SINGAPORE, 25 MAY 1973

[Not reproduced]

Annex 33

AGREEMENT BETWEEN INDIA AND SRI LANKA, 23 MARCH 1976

[Not reproduced]

Annex 34

NATIONAL LEGISLATION — BAHAMAS

(1) ORDER IN COUNCIL NO. 2574

(2) ACT NO. 17 OF 1970

(3) FISHERIES RESOURCES (JURISDICTION AND CONSERVATION) ACT, 1977

[Not reproduced]

Annex 35

NATIONAL LEGISLATION — BARBADOS

(1) ACT OF 1968 AMENDING THE PETROLEUM ACT, 1950

(2) ACT OF 1978 ESTABLISHING MARINE BOUNDARIES

[Not reproduced]

Annex 36

NATIONAL LEGISLATION – COMOROS

ORDONNANCE N° 76-038/CE DU 15 JUIN 1976 PRÉCISANT LES LIMITES DES EAUX TERRITORIALES COMORIENNES ET ÉTABLISSANT UNE ZONE ÉCONOMIQUE EXCLUSIVE

[Not reproduced]

Annex 37

NATIONAL LEGISLATION – FIJI

(1) CONTINENTAL SHELF ACT, 1970

(2) MARINE SPACES ACT, 1977

[Not reproduced]

Annex 38

NATIONAL LEGISLATION – GRENADA

ACT NO. 20 OF 1978

[Not reproduced]

Annex 39

NATIONAL LEGISLATION – ICELAND

(1) LAW NO. 44, CONCERNING THE SCIENTIFIC CONSERVATION OF THE CONTINENTAL SHELF FISHERIES, 5 APRIL 1948. "STJÓRNARTIDTINDI", 1948, A.4, P. 147

(2) ACT OF 24 MARCH 1969 REGARDING THE SOVEREIGN RIGHTS OF THE ICELANDIC STATE OVER THE CONTINENTAL SHELF AROUND ICELAND

(3) LAW NO. 41 OF 1 JUNE 1979 CONCERNING THE TERRITORIAL SEA, THE ECONOMIC ZONE AND THE CONTINENTAL SHELF

[Not reproduced]

Annex 40

NATIONAL LEGISLATION – KIRIBATI

PROCLAMATION OF 10 MARCH 1978

[Not reproduced]

Annex 41

NATIONAL LEGISLATION – NAURU

LEGISLATION ESTABLISHING AN EXCLUSIVE ECONOMIC ZONE: MARINE RESOURCES ACT 1978

[Not reproduced]

Annex 42

NATIONAL LEGISLATION – NEW ZEALAND

(1) THE CONTINENTAL SHELF ACT, 1964

(2) THE TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE ACT, 1977

[Not reproduced]

Annex 43

NATIONAL LEGISLATION – SOLOMON ISLANDS

(1) CONTINENTAL SHELF ORDINANCE, 1970

(2) FISHING LIMITS ORDINANCE, 1977

(3) DELIMITATION OF MARINE WATERS ACT, 1978

[Not reproduced]

Annex 44

NATIONAL LEGISLATION – TUVALU

(1) PROCLAMATION

(2) FISHERIES ORDINANCE

(3) PROCLAMATION OF FISHERY LIMITS UNDER SECTION 2 OF THE FISHERIES ORDINANCE

[Not reproduced]

Annex 45

NATIONAL LEGISLATION – WESTERN SAMOA

ACT NO. 3 OF 1977

[Not reproduced]

Annex 46

LEGISLATION BY DENMARK CONCERNING THE FAROE ISLANDS

ORDER NO. 598 OF 21 DECEMBER 1976
ON THE FISHING TERRITORY OF THE FAROES

[Not reproduced]

Annex 47

NATIONAL LEGISLATION BY NEW ZEALAND CONCERNING COOK ISLANDS

ACT NO. 16 OF 1977

[Not reproduced]

Annex 48

LEGISLATION BY NEW ZEALAND CONCERNING TOKELAU

ACT NO. 125 OF 1977

[Not reproduced]

Annex 49

LEGISLATION BY THE UNITED KINGDOM CONCERNING TURKS AND CAICOS ISLANDS

PROCLAMATION NO. 4 OF 1978

[Not reproduced]

Annex 50

AGREEMENT BETWEEN NORWAY AND THE UNITED KINGDOM COVERING ALSO THE SHETLANDS, 10 MARCH 1965

[Not reproduced]

Annex 51

AGREEMENT BETWEEN INDIA AND INDONESIA CONCERNING NICOBAR ISLANDS AND SUMATRA, 8 AUGUST 1974

[Not reproduced]

Annex 52

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND VENEZUELA CONCERNING PUERTO RICO, 28 MARCH 1978

[Not reproduced]

Annex 53

AGREEMENT BETWEEN INDIA AND THAILAND CONCERNING NICOBAR ISLANDS, 22 JUNE 1978

[Not reproduced]

Annex 54

AGREEMENT BETWEEN AUSTRALIA AND FRANCE CONCERNING (I) NEW CALEDONIA AND (II) KERGUELEN ISLANDS, 4 JANUARY 1982

[Not reproduced]

Annex 55

AGREEMENT BETWEEN CUBA AND HAITI, 27 OCTOBER 1977

[Not reproduced]

Annex 56

AGREEMENT BETWEEN FRANCE AND TONGA CONCERNING WALLIS AND FUTUNA ISLANDS, 11 JANUARY 1980

[Not reproduced]

Annex 57

AGREEMENT BETWEEN FRANCE AND MAURITIUS CONCERNING REUNION, 2 APRIL 1980

[Not reproduced]

Annex 58

AGREEMENT BETWEEN NEW ZEALAND AND THE UNITED STATES OF AMERICA CONCERNING COOK ISLANDS AND AMERICAN SAMOA, 11 JUNE 1980

[Not reproduced]

Annex 59

AGREEMENT BETWEEN NEW ZEALAND AND THE UNITED STATES OF AMERICA CONCERNING TOKELAU AND AMERICAN SAMOA, 2 DECEMBER 1980

[Not reproduced]

Annex 60

AGREEMENT BETWEEN FRANCE AND ST. LUCIA CONCERNING MARTINIQUE, 4 MARCH 1981

[Not reproduced]

Annex 61

AGREEMENT BETWEEN ITALY AND YUGOSLAVIA, 8 JANUARY 1968

[Not reproduced]

Annex 62

AGREEMENT BETWEEN ITALY AND TUNISIA, 20 AUGUST 1971

[Not reproduced]

Annex 63

AGREEMENT BETWEEN ITALY AND SPAIN, 19 FEBRUARY 1974

[Not reproduced]

Annex 64

AGREEMENT BETWEEN GREECE AND ITALY, 24 MAY 1977

[Not reproduced]

Annex 65

NOTE VERBALE FROM MALTA TO ITALY, 31 DECEMBER 1965

The Ministry of Commonwealth and Foreign Affairs presents its compliments to the Embassy of Italy and has the honour to inform the Embassy that the Government of Malta intends to carry out, in the near future, a survey of the continental shelf for the purpose of exploration and the eventual exploitation of its natural resources.

The survey will be carried out without any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea.

In the absence of an agreed boundary line for the continental shelf to the north of Malta, the boundary will be provisionally deemed to be the median line between Malta and Italy. This provisional arrangement is being made without prejudice to future discussions on the demarcation of this boundary line.

The Embassy of Italy,
Ta' Xbiex.

Annex 66

NOTE VERBALE FROM ITALY TO MALTA, 29 APRIL 1970

[Italian text not reproduced]

(Translation)

The Ministry of Foreign Affairs presents its compliments to the Embassy of Malta and has the honour to communicate what follows.

With Note Verbale of 24 January 1970 (CF A 1624/68) addressed to the Italian Embassy in Malta, the Maltese Ministry of Commonwealth and Foreign Affairs confirmed the impossibility, for the Government of Malta, to start early negotiations with Italy aimed at the delimitation of the continental shelf.

On the part of Italy, while account is taken of the technical difficulties which prevent the Maltese Government from giving an early start to the negotiations, one cannot but confirm the interest in a rapid resolution of the problem, also in view of the laws which regulate these matters in Italy.

In these circumstances the Italian Government, pending a definitive agreement on the matter, considers that a provisional solution is necessary for the area of more immediate interest, namely that between Malta and Sicily which is not affected by particular problems. In this respect, the Italian Government, recalling what at one time had been proposed by the Maltese Government by a Note Verbale of 31 December 1965, considers as opportune that, limitedly to the above-mentioned area, the median line between the northern coasts of Malta and the opposite Sicilian coasts could be considered as the provisional line of demarcation, and this of course without prejudice to future discussions and with reservations, particularly as regards the aforesaid line, for eventual corrections — which would presumably be of a mere technical nature — in relation to the definitive agreements which could be made during the negotiations.

Such a provisional solution would enable the two Governments to proceed without further delays with the publication of the data concerning the areas in question and with the granting of licences for exploration.

Annex 67

NOTE VERBALE FROM ITALY TO MALTA, 6 MARCH 1981

[Italian text not reproduced]

(Translation)

The Ministry of Foreign Affairs presents its compliments to the Embassy of Malta and refers to the problem of the delimitation of the continental shelf in the Mediterranean.

As is well known, as far back as the years 1965-1970, since it was not possible — for contingent technical reasons — to proceed to a negotiated delimitation of the continental shelf between Malta and Italy, it had been agreed that the median line between the aforesaid coasts be considered as the provisional line of demarcation of the said shelf.

The Note Verbale No. 143/64 by the Ministry of Foreign Affairs of Malta to the Italian Embassy on 31 December 1965 and that forwarded by this Ministry to the Embassy of Malta on 29 April, 1970, are evidence of the provisional character of the agreements reached ". . . without prejudice to future discussions and reservations for eventual corrections with respect to the aforesaid line".

Recently information has been received that the Maltese Authorities have issued a call for tenders with the object of carrying out prospecting and explorations for hydrocarbons in eight areas of the continental shelf situated largely in the zone comprised between Malta and Sicily.

The Italian Authorities, having regard to the understandings reached in the years 1965-70 and to the provisional character of the same, reserve the right to ascertain, by an indentification of the aforesaid exploration areas, whether the same are actually situated in the area of the continental shelf recognized as belonging to Malta by the aforesaid understandings.

The Italian Authorities in any case feel that it is advisable — in order to avoid situations which could prejudice Italian interests on the continental shelf in the Mediterranean — to proceed to a definitive delimitation of the respective areas of the continental shelf through the appropriate negotiations.

The Ministry of Foreign Affairs would be grateful to the Embassy of Malta if it could be advised of the views of the Maltese Government on the above matters.

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Annex 68

ADDITIONAL MATERIAL RELATING TO ISLAND DEVELOPING STATES

(**i**) In 1975 the resolution of the UN General Assembly on development and international economic co-operation adopted on 16 September (Resolution 3362 (S-VII)) contained two references to island developing countries: First, under heading I, "International Trade", paragraph 11 provides:

> " *11. Special measures should be undertaken by developed countries and by developing countries in a position to do so to assist in the structural transformation of the economy of the least developed, landlocked and island developing countires.*"

Second, under heading II, "Transfer of real resources for financing and development of developing countries and international monetary reforms", paragraph 12 provides:

> " *12. Developed countries should improve terms and conditions of their assistance so as to include a preponderant grant element for the least developed, landlocked and island developing countries.*"

(**ii**) In January 1976 the secretariat of UNCTAD produced a study entitled *Action on special measures in favour of the least developed among the developing countries, the developing island countries and the developing land-locked countries: policy issues and recommendations.*[1] Chapter III is devoted to "Special measures in favour of geographically disadvantaged developing countries". Its opening paragraphs read as follows:

> " 97. The problems of developing island countries were initially raised in Conference resolution 65 (III) of 19 May 1972, which requested the convening of a small panel of experts to identify them and make recommendations for consideration by the Trade and Development Board. The report of this panel* stressed the fact that developing island countries had many problems similar to those facing developing countries as a whole. However, it identified certain issues as being of particular concern to island countries. First, although the majority of the inhabitants of developing island countries live in large countries such as Indonesia, the Philippines and Sri Lanka, most developing island countries and territories are in fact

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[1] Doc. TD/191; ***Proceedings of the UN Conference on Trade and Development, Fourth Session***, vol. III, p. 188.

* ***Developing island countries*** (United Nations publication, Sales No. E.71.II.D.6).

small, and some of them very small indeed. Thus, problems associated with small territorial size are likely to be of special concern. Secondly, small islands are heavily dependent on external transport, and in particular on shipping. Thus, the nature and cost of shipping services need special consideration. Thirdly, many such islands lie in the path of tropical storms, and need to plan to meet disasters. Fourthly, they have a particular interest in questions relating to the control of marine resources. Finally, in view of their small size and the limitations which this places on their prospects for economic development, they have a particular interest in regional co-operation.

98. In its decision 28 (LVII) of 2 August 1974, the Economic and Social Council requested the Secretary-General of the United Nations, in consultation with the Secretary-General of UNCTAD and the executive heads of the specialized agencies and other international institutions, to:

(*a*) Prepare a report outlining the special economic problems and development needs of the geographically more disadvantaged developing island countries;

(*b*) Make concrete proposals concerning any measures required to overcome or minimize the effects of the special problems of the countries referred to in subparagraph (*a*) above;

(*c*) Present this report to the Committee on Review and Appraisal within the context of the mid-term review of the International Development Strategy for the Second United Nations Development Decade.

In the report prepared by the UNCTAD secretariat in pursuance of this decision,* the special problems stemming from peripheral location, inadequate resource base and small size were examined in greater detail, and the possible measures which might help to offset these handicaps were studied.

99. Measures need to be taken in the following areas in order to alleviate the most acute of the particular disabilities facing geographically disadvantaged island developing countries."

(**iii**) The position of developing island countries (in conjunction with the least developed among developing countries and developing land-locked countries) was considered at the Third Ministerial Meeting of the Group of 77 held at Manila in 1976.[1] Section six of the programme of action contains a reaffirmation of the conviction of the meeting concerning the need to agree upon effective international action to contribute to the solution of the specific and permanent problems of, *inter alia*, developing island countries. It was recognized that these measures should be in addition to the measures to be adopted in general for all developing countries in the spirit of the UN resolution concerning the establishment of the new international economic order.[1]

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[1] See *Proceedings of the UN Conference on Trade and Development, Fourth Session*, vol. I, Report and Annexes (UN publication, Sales No. E.76.II.D.10 and corrigendum), Annex V.

* "Special economic problems and development needs of the geographically more disadvantaged developing island countries (note by the Secretary-General)" (E/5647).

In relation to developing island countries, the areas in which action was called for were identified under such heads as shipping, air services, telecommunications, etc. Heading E was "Marine and undersea resources". This provided:

> "46. The sovereignty of developing island countries, and particularly the archipelagic States, over their marine and sub-marine resources should be recognized and affirmed. The multilateral financial institutions and technical assistance agencies should provide effective assistance to these countries to enable them to exploit fully those resources . . . .[2]"

(iv) The fourth session of UNCTAD held in May 1976 adopted resolution 98 (IV) of 31 May 1976,[3] in which the part dealing with the particular needs and problems of developing island countries recommended action on, *inter alia*, assistance in exploiting marine and submarine resources; intensification of efforts to help small islands plan rationally in order to deal with the peculiar problems of human geography and ecology; and intensification of efforts to increase the flow of resources to island developing countries.

Prior to the Conference the socialist countries[4] circulated within UNCTAD a position paper which, though referring specifically only to the needs of the economically least developed among developing countries and the land-locked countries, was printed in the records under the heading: "Least developed among developing countries, developing island countries and developing land-locked countries"[5]. In this paper, mention was made of the "serious difficulties [of the least developed countries] in overcoming the backwardness inherited from the colonial era and in achieving their economic independence, and especially of the inflationary rise in prices of goods on the world capitalist market".[6]

The significance of the utilisation of national resources was emphasized by the inclusion in the list of matters on which the socialist countries would be prepared to cooperate with developing countries of the item: "Organizing and carrying out geological exploratory and prospecting work for the discovery, evaluation and exploitation of minerals".[1]

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[1] *Ibid.*, p. 122.

[2] *Ibid.*, p. 126.

[3] *Ibid.*, p. 22.

[4] Listed as Bulgaria, Byelorussian SSR, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Ukrainian SSR, and the USSR.

[5] TD (VI)/GC/4; *ibid.*, p. 150.

[6] *Ibid.*

(v) The UNCTAD meeting was followed on 21 December 1976 by a UN General Assembly resolution (31/156) on "Action programme in favour of developing island countries". After recalling earlier indications of General Assembly interest in the subject (which have been set out above), the resolution continues:

> "*The General Assembly,*
>
> ......
>
> *Recognizing* the particular impediments hampering the economic development of many developing island countries, especially their difficulties in respect of transport and communication, the smallness of their economies and markets, their low resource endowment and their heavy dependence on a few commodities for foreign exchange earnings,
>
> 1. *Invites* the executive heads of the organizations concerned within the United Nations system and in particular of the United Nations Development Programme, in the continuation of their efforts with respect to developing island countries to incorporate in their regional and interregional programmes the relevant recommendations contained in resolution 98 (IV) of the United Nations Conference on Trade and Development;
>
> 2. *Urges* all Governments, in particular those of the developed countries, to lend their support, in the context of their assistance programmes, for the implementation of the specific action envisaged in favour of developing island countries within the framework of their development plans and priorities;
>
> 3. *Calls upon* the Secretary-General to submit to the General Assembly at its thirty-second session, through the Economic and Social Council, a progress report on the implementation of specific action in favour of developing island countries."

(vi) In a later resolution at the same session, the General Assembly endorsed the resolution of UNCTAD recommending a series of special measures and specific action in favour of, *inter alia*, island developing countries and requested all organizations connected with the UN systems to incorporate the relevant recommendations in their activities and implement them as a matter of urgency. (Resolution 31/159, para. 10).

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[1] *Ibid.*, p. 151.

(vii) The General Assembly at its thirty-second session again reverted to the subject of developing island countries. On 19 December 1977 it adopted a resolution which stated, *inter alia*:

"*The General Assembly*,

. . . . . .

Mindful that the particular impediments hampering the economic development of many developing island countries, especially their difficulties in respect of transport and communications, their distance from market centres, the smallness of their economies and markets, their low resource endowment and their heavy dependence on a few commodities for foreign exchange earnings, call for the continued attention of Governments and of organizations of the United Nations system.

Convinced that specific action in favour of developing island countries, supplementary to the general measures applicable to all developing countries, is required to meet these particular impediments,

1. *Takes note* of the report of the Secretary-General on progress in the implementation of specific action in favour of developing island countries* and welcomes the initiation of the measures specified therein;

2. *Welcomes* in particular the activities undertaken by the United Nations Conference on Trade and Development, including the establishment of a unit in its secretariat devoted to the problems of least developed, land-locked and island developing countries;

3. *Also welcomes* the progress achieved by the United Nations Industrial Development Organization in its implementation of the special technical assistance programme for developing island countries;

4. *Urges* all organizations in the United Nations system to continue to identify and implement, within their respective spheres of competence, appropriate specific action in favour of developing island countries, in accordance with the recommendations of resolution 98 (IV) of the United Nations Conference on Trade and Development, in particular those concerning the fields of transport and communications, trade and commercial policies, industrialization, tourism, the transfer of technology, marine and submarine resources development, the flow of external resources, environment protection and response to natural disasters;

5. *Further urges* the United Nations organizations concerned, in

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* A/32/126 and Add.1.

particular the United Nations Development Programme and the regional commissions, to give attention to programmes of regional and subregional co-operation in respect of developing island countries;

6. *Calls upon* Governments, in particular those of the developed countries, to take fully into account, in their bilateral and regional development efforts and in relevant negotiations towards the attainment of the objectives of the new international economic order, the special problems of developing island countries;

....

7. *Decides* to keep under review all progress in the implementation of the present resolution and requests the Secretary-General to submit for the consideration of the General Assembly at its thirty-fourth session a sectoral analysis of action undertaken in favour of developing island countries and proposals for further consideration, taking into account the consideration of this question by the United Nations Conference on Trade and Development at its fifth session".

(viii) Two ways later the fifth session of UNCTAD in 1979 returned to the subject and adopted Resolution 111 (V), "Specific action related to the particular needs and problems of island developing countries", the full text of which is set out below:

"111 (V). Specific action related to the particular needs and problems of island developing countries

The United Nations Conference on Trade and Development,

Reiterating the specific actions related to the particular needs and problems of island developing countries as contained in Conference resolution 98 (IV) of 31 May 1976, section III, and in the relevant General Assembly resolutions and urging full compliance with them by the international community and,

Taking note with appreciation of the report of the Group of Experts on Feeder and Inter-island Services by Air or Sea for Developing Island Countries,*

1. *Agrees* that further specific action is needed in the case of island developing countries to assist them to offset their major handicaps, in particular those which suffer handicaps due especially to smallness, remoteness, constraints in transport and communi-

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* *Official Records of the Trade and Development Board, Eighteenth Session, Annexes,* agenda item 6, document TD/B/687.

cations, great distances from market centres, highly limited internal markets, lack of marketing expertise, low resources endowment, lack of natural resources, heavy dependence on a few commodities for their foreign exchange earnings, shortage of administrative personnel, and heavy financial burdens. The international community should be ready to take action to ensure that the full benefit of general measures in favour of developing countries is shared by island developing countries;

2. *Urges* that specific action in the following areas in favour of island developing countries should be undertaken within the framework of their development plans and priorities and in accordance with accepted development criteria and technical and financial assistance provided by developed countries and multilateral financial and aid institutions, taking into account over-all prospects for, as well as existing levels of, development:

(*a*) In order to lower their vulnerability to economic instability, every effort should be made to diversify their economies by, *inter alia*, development of infrastructure and implementation of over-all national development programmes;

(*b*) Island economies, particularly those with limited domestic markets, rely heavily on exports for their foreign exchange earnings. Access to markets should be facilitated by:

(i) Assistance in trade promotion efforts;

(ii) Simplification of preference procedures where appropriate, so that small administrations and enterprises can take advantage of preferential access to markets where it is in principle available;

(*c*) Many of these countries are actively seeking foreign investment for export processing industries, other industries, tourism, etc. Such efforts should be supported by assistance from the international community, including:

. . . . . .

7. *Reaffirms* that the criteria, terms and conditions governing the flow of bilateral and multilateral financial and technical assistance to the island developing countries should be geared to the special needs and problems of the countries concerned;

8. *Requests* the Trade and Development Board, in carrying out its tasks, to take into consideration the special needs of island developing countries as identified, *inter alia*, by the regional commissions and to co-operate with them and other competent organizations in carrying out tasks in favour of these countries;

9. *Recognizing* the importance of tourism as a major source of income, employment and foreign exchange for some island developing countries, and therefore the importance for them of international air passenger transport, invites the International Civil Aviation Organization, with assistance from UNCTAD and the appropriate regional institutions, to study the policy issues involved in the development of air transport services and to give support to the efforts of these countries in concluding mutually satisfactory air service agreements in respect of both scheduled and non-scheduled services by airlines of national designation;

10. Having noted the report of the Group of Experts on Feeder and Inter-island Services by Air or Sea for Island Developing Countries, invites the Secretary-General of UNCTAD to consult States members and the appropriate bilateral, regional and multilateral development institutions about the recommendations they consider most useful and the measures needed to have these implemented."

(ix) This was followed by General Assembly Resolution 34/205 of 19 December 1979 which stated:

"*The General Assembly,*

. . . . . .

Mindful that further specific action is needed in the case of developing island countries to assist them in offsetting their major handicaps, in particular those developing island countries which suffer handicaps due especially to smallness, remoteness, constraints in transport and communication, great distances from market centres, highly limited internal markets, lack of marketing expertise, low resource endowment, lack of natural resources, heavy dependence on a few commodities for their foreign exchange earnings, shortage of administrative personnel and heavy financial burdens,

Emphasizing the need for a more effective response by the international community to the various resolutions adopted by the General Assembly and its related organs in favour of developing island countries,

1. *Welcomes* resolution 111 (V) of 3 June 1979 of the United Nations Conference on Trade and Development,[195] entitled "Specific action related to the particular needs and problems of island developing countries";

2. *Takes note* of the report of the Secretary-General entitled "Action programme in favour of developing island countries";[196]

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[195] See TD/268, part one, sect. A.

[196] A/34/544 and Add. 1.

3. *Calls upon* the international community to implement urgently the specific actions related to the particular needs and problems of developing island countries as agreed upon in Development;

4. *Further calls upon* the international community to ensure that the criteria, terms and conditions governing the flow of bilateral and multilateral financial and technical assistance to the island developing countries should be geared to the special needs and problems of the countries concerned:

5. *Invites* the competent organs of the United Nations system to consider taking effective steps to enhance their capacity to respond positively to the specific needs of developing island countries at the national, regional and interregional levels, including strengthening their technical and advisory services on behalf of these countries;

6. *Further invites* the Preparatory Committee for the New International Development Strategy to take fully into account, in the formulation of the strategy for the third United Nations development decade, the particular needs and problems of developing island countries;

7. *Requests* the United Nations Development Programme, and invites international development institutions and bilateral institutions, to consider increasing their assistance to developing island countries;

8. *Invites* the United Nations Development Programme and other competent institutions to co-operate with the United Nations Conference on Trade and Development in the programme of activities envisaged in paragraphs 4 and 5 of resolution 111 (V) of the Conference;

9. *Recommends* that developed countries, international development institutions and those developing countries which are elaborating programmes of assistance in favour of other developing countries should give particular attention to requests for assistance from developing island countries;

10. *Calls upon* the regional commissions urgently to identify appropriate action in favour of the developing island countries in their respective regions;

11. *Requests* the Secretary-General to include, in his analytical report to the General Assembly at its special session in 1980 on the establishment of the new international economic order called for in Assembly resolution 33/198 of 29 January 1979, an assessment of the situation in the developing island countries."

(x) On 5 December 1980 the UN General Assembly adopted without a vote two resolutions. One was on the International Development Strategy for the Third UN Development Decade (Resolution 35/56). In the section dealing with developing island countries, this resolution provided:

> "3. *Developing island countries*
>
> 148. During the Decade, further specific action will be taken to assist developing island countries in offsetting major handicaps due to geographical and other constraints. In order to lower their vulnerability to economic instability, every effort will be made by the international community to assist them in diversifying their economies, taking into account over-all prospects for, as well as existing levels of, development.
>
> 149. Efforts of developing island countries in actively seeking foreign investment will be supported by the international community, including investment in their infrastructural projects, especially in the sectors of water, electricity, industrial estates and transport. The establishment of joint ventures and assistance in strengthening the capacity of developing island countries to negotiate with foreign investors should also be explored during the Decade. Their access to foreign markets will be facilitated by assistance, both technical and financial, in their trade promotion efforts and by the simplification of preference procedures, where appropriate, so that small administrations and entreprises can take full advantage of preferential access to markets where it is in principle available. Assistance will be given in the establishment of appropriate technical education and training programmes, including the areas of marketing and management.
>
> 150. Financial and other assistance to developing island countries by multilateral and bilateral institutions will be augmented as appropriate. Assistance procedures should be simplified to the extent possible.
>
> 151. The developed countries and international organizations should be ready to take action to ensure that the full benefit of general measures in favour of developing countries is shared by developing island countries."

The other resolution was 35/61, dealing specifically with developing island countries. It provided:

> "*The General Assembly*,
>
> . . . .
>
> *Mindful* that further specific action is needed to assist developing

island countries—in particular those which suffer handicaps due especially to smallness, remoteness, constraints in transport and communications, great distances from market centres, highly limited internal markets, lack of marketing expertise, low resource endowment, lack of natural resources, heavy dependence on a few commodities for their foreign exchange earnings, shortage of administrative personnel and heavy financial burdens—in offsetting the major handicaps that they face in their development process.

Bearing in mind the goals and objectives of the International Development Strategy for the Third United Nations Development Decade,

1. *Notes with concern* that very few significant initiatives have so far been taken for the implementation of the specific actions envisaged in resolutions 98 (IV) and 111 (V) of the United Nations Conference on Trade and Development;

2. *Appeals* to all States, international organizations and financial institutions to take urgent and effective steps to implement specific actions in favour of developing island countries, as envisaged in resolutions 98 (IV) and 111 (V) of the United Nations Conference on Trade and Development as well as in other resolutions on this subject;

3. *Invites* the competent organizations of the United Nations system to take further measures as necessary to enhance their capacity to respond positively to the specific needs of developing island countries during the Third United Nations Development Decade;

4. *Decides* to undertake at its thirty-seventh session a comprehensive review of the implementation of the measures taken by the international community in favour of the specific needs of the developing island countries, as called for in the relevant resolutions of the General Assembly and other resolutions on this subject.

(**xi**) Concern with the problem of island developing countries continues. In 1982 the Secretary-General of the UN produced a report entitled: *UNCTAD—Progress in the implementation of specific action in favour of island developing countries*.[1] The "Summary and Conclusions" of this Report includes the following:

> "79. *Energy is a world-wide problem; nonetheless, it is frequently mentioned in the context of island developing countries where specific solutions may be appropriate. Apart from energy-saving measures, submarine prospecting and soft energy are among the issues raised.*
>
> "80. *Marine resources receive due attention in the replies, in view*

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[1] A/37/196th, 21 October 1982.

especially of the opportunities the declaration of Exclusive Economic Zones offers to island developing countries. These zones have greatly expanded many island developing countries' resource base. This includes resources of the sea itself, such as fish, or of the sea-bed and beneath, such as minerals or oil. These countries are now faced with the challenge of integrating these resources into their national development strategies."

(**xii**) Most recently, on 20 December 1982, the General Assembly, in Resolution 37/206, restated its concern as follows:

> *"The General Assembly,*
>
> . . . . . .
>
> *Mindful* of the fact that additional efforts are needed to implement the specific measures required to assist island developing countries—in particular those which suffer handicaps owing especially to smallness, remoteness, frequent natural disasters, discontinuity and scattering of territory, constraints in transport and communications, great distances from market centres, limited internal markets, lack of marketing expertise, low resource endowment, lack of natural resources, heavy dependence on a few commodities for their foreign exchange earnings, shortage of administrative expertise and heavy debt burdens—in offsetting the major handicaps which retard their development process.
>
> *Welcoming* the analysis of the problems facing smaller island countries undertaken at the meeting on the special problems of those countries, held at Alofi, Niue, from 9 to 12 February 1982,[1]
>
> *Recognizing* that appropriate industrial development can be vital to the economic development of small island countries.
>
> . . . .
>
> 4. *Calls upon* all States, international organizations and financial institutions to intensify efforts to implement specific actions in favour of island developing countries as envisaged in resolutions 98 (IV)[2] and 111 (V)[3] of the United Nations Conference on Trade and Development as well as in other relevant resolutions;
>
> 5. *Requests* the competent organizations of the United Nations system to take adequate measures to enhance their ability to respond positively to the particular needs of island devedoping countries during the Third United Nations Development Decade, in particular the

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[1] See A/37/196 and Corr.1, annex.

[2] See *Proceedings of the United Nations Conference on Trade and Development, Fourth Session,* vol. I, *Report and Annexes* (United Nations publication, Sales No. E.76.II.D.10 and corrigendum), part one, sect A.

[3] *Ibid., Fifth Session,* vol. I, *Report and Annexes* (United Nations publication, Sales No. E.79.II.D.14), part one, sect. A.

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United Nations Conference on Trade and Development, the United Nations Development Programme, the United Nations Industrial Development Organization and the United Nations Capital Development Fund and;

6. *Requests* the United Nations Conference on Trade and Development, at its sixth session, to review the progress made in this area and to consider the measures needed to facilitate the implementation of the resolutions adopted so far in favour of island developing countries;

7. *Requests* the Secretary-General to report to the General Assembly at its thirty-ninth session on the measures taken by the international community to respond to the specific needs of island developing countries, as called for in the relevant United Nations resolutions, and to recommend further appropriate actions to permit the General Assembly to undertake a comprehensive review of the problems and needs of the island developing countries at that session."

Classification of developing island countries and territories by population category, income level, land area and distance from the nearest continent

Population category 1973	*Income level: per capita GNP in 1973 (dollars)*	*Distance from nearest continent*		
		Less than 200 kilometres	*200—1,000 kilometres*	*More than 1,000 kilometres*
Large and medium (over 1 million inhabitants)	Under 250	Indonesia (L) Sri Lanka (L)	Madagascar (L) Haiti (M) Philippines (L)	
	250 to 399		Papua New Guinea (L)	
	400 to 1000		Cuba (L) Jamaica (M) Dominican Republic (L)	
	Over 1000	Hong Kong (S) Singapore (VS) Trinidad and Tobago (M)	Puerto Rico (M)	
Small (150,000 to 1 million inhabitants)	Under 250		East Timor (M) Comoros (S)	
	250 to 399	Macao (VS)	Cape Verde (M)	Mauritius (S) British Solomon Islands (M) Western Samoa (S)
	400 to 1000		Barbados (VS) Bahrain (VS)	Fiji (M)
	Over 1000		Cyprus (M) Martinique (S) Guadeloupe (S) **Malta (VS)** Netherlands Antilles (S) Bahamas (M)	Réunion (S)
Very small (under 150,000 inhabitants)	Under 250		Maldives (VS) St. Vincent (VS)	Tonga (VS)
	250 to 399		St. Lucia (VS) Grenada (VS) Dominica (VS) St. Kitts-Nevis-Anguilla (VS) Antigua (VS) Seychelles (VS)	Gilbert Islands (VS) Tuvalu (VS)
	400 to 1000		São Tomé and Principe (S)	New Hebrides (M) Pacific Islands (S)
	Over 1000		US Virgin Islands (VS)	American Samoa (VS) Brunei (M) French Polynesia (M) New Caledonia (VS) Guam (VS) Bermuda (VS)

Sources: *UNCTAD Handbook of International Trade and Development Statistics, 1976* (United Nations publication, Sales No. E.F.76.II.D.3), and *Developing Island Countries* (United Nations publication, Sales No. E.74.II.D.6).

NOTE. Land area indications:
VS = very small (under 1,000 sq km),
S = small (1,000—3,999 sq km),
M = medium (4,000—39,999 sq km),
L = large (40,000 sq km and over).

Annexes 1-68

CERTIFICATION

I, the undersigned, *Edgar Mizzi*, Agent of the Republic of Malta, hereby certify that the copies of the documents attached as Annexes 1 to 68 (both inclusive) of the Memorial submitted by the Republic of Malta are accurate copies of the documents they purport to reproduce and that where a translation of such document is attached that translation is an accurate translation of such document.

This 26th day of April, 1983.

(Signed) Edgar MIZZI,
Agent of the Republic of Malta.

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